TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 488.

JAMES R. JETTON, REVENUE AGENT OF THE STATE OF TENNESSEE; DAVID S. OSBORNE, TRUSTEE OF FRANKLIN COUNTY, TENNESSEE, AND THE COUNTY OF FRANKLIN, APPELLANTS,

vs.

UNIVERSITY OF THE SOUTH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 23, 1907.

(20,891.)

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a United States Circuit Court, Middle District of Tennessee.

Equity. 3481.

THE UNIVERSITY OF THE SOUTH ET AL.
vs.
JAMES R. JETTON, State Revenue Agent of Tennessee, *et al.*

Transcript of Record.

Attorneys:

A. T. McNeal, Sewanee, Tennessee; Crownover & Crabtree, Winchester, Tennessee; W. L. Myers, Spears & Lynch, Chattanooga, Tennessee, Solicitors for Complainants.

John J. Vertrees, Of Counsel for Complainants.

Chas. T. Cates, Attorney General, Knoxville, Tenn., for the State of Tennessee.

Lynch & Phillips, Winchester, Tenn.; Thos. B. Lytle, Murfreesboro, Tenn., Solicitors for Defendants.

1 At a regular session of the United States Circuit Court for the Middle District of Tennessee, begun and holden at the Custom House in Nashville, Tennessee, being the April term, 1906, present and presiding the Hon. Chas. D. Clark, Judge etc., the following proceedings were had, to-wit:

Upon the eig-th day of September, during said term, a bill was filed as follows, viz:

No. 3481. Equity.

THE UNIVERSITY OF THE SOUTH ET AL.
vs.
JAS. R. JETTON, State Revenue Agent, *et al.*

To the Honorable Judges of the Circuit Court of the United States for the Middle District of Tennessee, sitting in equity:

The bill of complaint of the University of the South, B. L. Wiggins, R. M. Du Bose, C. M. Ruef, J. H. Collin, Mrs. T. G. Hodgson, Miss Sarah Barnwell Elliott, Mrs. E. Kirby Smith and A. R. Gray.

Said University of the South is a corporation, chartered under the laws of the State of Tennessee, with its situs at Sewanee, Franklin County, Tennessee. The other complainants are residents and citizens of Sewanee, Franklin County, Tennessee, and all in the Middle Division and Middle District of this State.

against

James R. Jetton, State Revenue Agent, a citizen of Rutherford County Tennessee, a resident and citizen of said county; and the County of Franklin, all in the Middle Division and Middle District of the State of Tennessee.

Complainants would respectfully show the court:

1. That the University of the South is a corporation, organized and chartered for the purposes set forth in its charter from the State of Tennessee, as follows:

"Whereas, sundry citizens of the States of Tennessee, Alabama, Georgia, North Carolina, South Carolina, *Alabama*, Louisiana, Texas, Mississippi, and Florida, contemplate establishing a university, to be located in the State of Tennessee, at a place which shall be conveniently accessible to the citizens of said States, which university is to be under the control and government of the Protestant Episcopal Chu-ch, subject to such rules, regulations and restrictions, as are hereinafter set forth:

And Whereas, the security of society, the supremacy of the law, the preservation of liberty regulated by law, the perpetuity of our institutions and of the Union—all are, at last, dependent upon the prevalence of intelligence of the people, and sound moral sense among them:

And Whereas, it is to the interest of the State, and, indeed, of every state, to encourage the erection of Seminaries of Learning; therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That James H. Otey, David Pise, Francis B. Fogg, John Armfield, Thoms Atkinson, M. Ashley Curtis, Thomas Ruffin, Thomas D. Warren, Thomas F. Davis, Alexander Gregg, J. L. Manning, William Allston Pringle, Stephen Elliott, N. H.
2 Cobbs, Henry C. Clay, C. T. Pollard, L. H. Anderson, William M. Green, W. W. Lord, George S. Yerger, Eugene Hinton, Leonidas Polk, W. T. Leacock, Geo. S. Guion, William M. Mercer, J. W. Dunn, E. B. Nichols, J. E. Nicholson, Francis M. Rutledge, G. R. Fairbanks, Geo. Whitfield, J. J. Scott, and such other persons or person, as may be hereafter appointed trustees of said university, in pursuance of the constitution and by-laws thereof, be, and they and their successors are hereby, constituted a body corporate and politic, in fact and in name, by the name of "The University of the South," and by that name shall have perpetual succession, and a common seal; and shall be capable in law of suing and being sued, and shall have the power to purchase, receive by donation or otherwise, and to possess, hold, alien and dispose of property of all kinds and description, to be held in fee simple or otherwise; subject, nevertheless, to such restrictions and conditions as are contained in this charter.

SECTION 2. Be it further enacted, That said trustees shall have power to assemble at such time and place as may be designated by the President of the Board, for the purpose of organizing said institution and of forming a constitution for the government of said university. A majority of said trustees shall constitute a quorum for such purpose. Said trustees shall have power in and by said constitution to designate how and by whom and in what way the said university shall be governed; and said constitution, when adopted, may be altered or amended in such manner as may be provided for

in said constitution. Said Board shall keep a minute of their proceedings.

SECTION 3. Be it further enacted, That said Board shall meet at least once a year, at the University, when the buildings are erected; but they may be called together in extra session, in such manner as may be provided for in said constitution, or by the by-laws of said institution.

SECTION 4. Be it further enacted, That said trustees shall have power to appoint committees, all the members of which shall not be required to belong to the Board of Trustees, to perform duties which may be delegated to them by said trustees.

SECTION 5. Be it further enacted, That all subscriptions, donations, devises, or bequests made upon the faith of the terms, conditions, or stipulations set forth in the constitution of said university, shall be governed thereby, and the subsequent change or alteration of said constitution shall not have the effect to alter the terms, conditions, or stipulations of said subscription, donation, bequest or devise.

SECTION 6. Be it further enacted, That said trustees shall appoint a President and shall have power, from time to time, to make by-laws and ordinances for the government of said university, not inconsistent with the constitution thereof, and for the appointment of professors, and other officers, and for regulating the duties and conduct of the officers, professors and students, fixing the salaries of the officers, etc., etc.; provided the same be not inconsistent with the constitution and laws of this State, or of the United States.

SECTION 7. Be it further enacted, That upon the death, resignation or removal of any of said trustees, the vacancy occasioned thereby shall be supplied in the manner provided in the constitution.

SECTION 8. Be it further enacted, That said University shall have full power to establish literary and scientific departments and those of law, theology and medical science, and such other departments as said university may see proper; and to confer upon students, or any other person, the degrees of Batchellor of Arts, Master of Arts, or any degree known and used in any college or university, and shall enjoy all other powers and immunities incident to corporations of this description.

SECTION 9. Be it further enacted, That said university shall be established and located at Sewanee, on the Cumberland Mountain, in or near Franklin County, or at any other point the Board of Trustees may hereafter designate in the State of Tennessee, the site to be selected by the trustees, or by such person or persons as they may appoint; which site shall continue until changed by the trustees according to the provisions of the constitution.

SECTION 10. Be it further enacted, That said university may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution and the students thereof, from the intrusion of evil-minded persons who may settle near said institution, said land, however, not to exceed ten

thousand acres, one thousand of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said university.

SECTION 11. Be it further enacted, That no misnomer or misdescription of said corporation in any deed, will, gift, grant, devise, or other instrument of contract, or conveyance shall abate or defeat the same, but the same shall take effect in like manner as if the corporation were regularly named. Provided it shall be sufficiently described to ascertain the intention of the parties.

SECTION 12. Be it further enacted, That this Act be and the same is hereby declared to be a public act.

SECTION 13. Be it further enacted, That this act take effect from and after its passage.

DANIEL S. DONELSON,
Speaker of the House of Representatives.
JOHN C. BURCH,
Speaker of the Senate.

Passed January 6th, 1858.

I, F. N. W. Burton, Secretary of State, do hereby certify that the foregoing is a true copy from the original Act on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of the State, this 15th day of January, 1858.

F. N. W. BURTON,
Secretary of State.

An Act to Amend an Act of January 6th, 1858, Chapter 29th of the Private Laws, Entitled "An Act to Establish the University of the South."

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That Stephen Elliott, Daniel Griffin, and J. Hamilton Couper, be and they are hereby appointed additional trustees to said University of the South.

SECTION 2. The said University of the South shall have power and *and* authority to *t*receive donat*a*tions, and grants of lands in addit*i*on to the — of acres specified in the Te*n*th Section of the cha-ter. Provided, That, if said additional donations, *donations*, or grants, are of lands in the state, that such lands — sold and disposed of by the University and converted into personal securities or State bonds.

SECTION 3. The said University of the South shall have a right to establish such police and municipal regulations as may be necessary for the preservation of order and the enforcement of the by-laws of *order and the enforcement of the by-laws of* said university; the same to be consistent with the laws of the United States and of this State. That the foregoing shall be the amendment of the charter of said university.

SECTION 4. Be it further enacted, That this Act shall take effect from and after its passage.

(Signed) W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Passed January 19th, 1860.

STATE OF TENNESSEE:

I, J. E. R. Ray, Secretary of State, hereby certify that the foregoing Act is a true copy of the enrolled Act, now on file in my office, passed by the Legislature of Tennessee on the 19th day of January, 1860.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at office in Nashville, on this 3d day of February, A. D. 1860.

[L. S.]

J. E. R. RAY,
Secretary of State.

This charter was granted to the University of the South to carry out a plan for the establishment of a great university on the part of the leading citizens and churchmen of the various Southern States.

On July 1st, 1856, Rt. Reverend Leonidas Polk, a bishop of the Protestant Episcopal Church, set forth in a letter to his church associates of the dioceses or states of of Tennessee, Georgia, Alabama, Arkansas, Texas, Mississippi, Florida, South Carolina, and North Carolina, the idea and conception of this university.

On the 23d of October, 1856, all of the bishops of the dioceses and states above named united in a circular letter on the subject, addressed to the members and friends of the church in these 4 states. As a result of these efforts, representatives from the ten states mentioned met on Lookout Mountain, near Chattanooga, Tennessee, on July 4th, 1857, to take action in the matter of establishing a great university in the South. While this organized action was taken by representatives Episcopal churchmen of these southern states, the movement was not sectional in a political sense, nor sectarian in a religious sense. At the same time, the scheme required of necessity united and harmonious action, so the effort to establish this university was made under the auspices and control of the Protestant Episcopal Church. The enterprise was one in which the people of these ten states generally were very much interested, one in which the public, regardless of denominational feeling, felt and exhibited great interest. There was a great deal of competition and rivalry as to the site of the proposed university, and many inducements offered by various localities in Alabama, Mississippi, Tennessee, Georgia, and the Carolinas. The citizens of these various localities made strenuous efforts to secure the location of the university, but it was decided finally to locate the same at Sewanee, in Franklin County, Tennessee, provided a proper charter could be obtained from the State of Tennessee.

had a right to own and hold free from taxation. Said one thousand acres is described as follows:

"Commencing at a stake at the junction of two branches of a creek in section 12, range 21, near the point where the 'Corso' crosses the bridge (from this stake a chestnut oak bears south 24 east 4 feet, and an oak in edge of road bears north 61 west 13 feet); thence west 2428 feet to a stake which is 1414½ feet southwest of corner of section 11 and 12, Ranges 20 and 21; thence south 45 west 3818½ feet to a hickory tree five inches in diameter at intersection of sections 18 and 19, Range 20, and 24 and 25, Range 21. This hickory is five feet easterly from 'Corso,' and 100 feet easterly from branch; thence south 45° east 5500 feet to turnpike at 6788 feet, ends at stake at intersection of sections 30 and 31, Ranges 21 and 22. From this stake a dogwood eight inches thick bears south 30° east 17 feet, a dogwood stump bears north 78 west 6 feet. Thence north 45 east, at 1560 feet crosses road leading from turnpike to depot; at 4490 feet crosses road; at 6600 feet crosses road to coal bank; at 7161 feet ends line at stake in branch, said stake being 60 feet down stream from a large rock in branch. From this stake a holly bears north 60 west 9 feet, and a chestnut oak bears south 49½ west 11 feet. From this stake the intersection of section 17 and 18, Ranges 8 and 9 bears north 45 east 294 feet. Thence down the channel of said branch to its emergence from University lands. Thence westerly following edge of University lands to the creek from whence the first line started, and up the channel of said creek to the beginning stake."

6. When this was done, the University began the erection of school buildings, houses, etc., with funds derived from donations, contributions made on the faith of the powers and rights conferred by the State of Tennessee in the charter granted said University. This work was being carried rapidly forward when it was interrupted by the Civil War between the northern and southern states and, of course, the work was suspended during the several succeeding years. Immediately after the close of the Civil War, however, as the impoverished condition of the country would permit, the officers and trustees of the University again took up the work of establishing and carrying forward the university in the manner contemplated by its founders and by the charter. Although the members of the Episcopal Church in the various southern and southwestern dioceses were at that time poorly prepared to contribute to this enterprise, the church officials throughout all the southern and southwestern states pressed forward the establishment of this institution with the most untiring zeal, with the result that they have established and maintained for many years one of the best equipped and best managed universities in the South. During all this time, however, the University has been and still is handicapped for want of funds with which to carry forward the purposes of the founders of the institution. One of the methods by which the University has been able to raise a part of the necessary revenue with which to maintain itself has been by leasing out a part of this reserved and exempted domain.

2. The University has a theological department, a medical depart-

ment, a law department and a grammar school, in addition to its regular academic department, and there are resident at Sewanee the deans of the various departments, the officers, professors and teachers in the various departments of the University. There are also numerous boarding houses for the accommodation of the students of the University and others directly and indirectly connected with the University living at Sewanee, merchants, mechanics and others doing business there, but practically all of the business done at Sewanee is either directly or indirectly connected with the University. In other words, it is a university village and but for the university there would be neither business nor residents at that place.

3. To all these residents at Sewanee the university has leased building lots for various terms from ten to thirty-three years, most of them provided for renewals. Under these leases the lessees are required to erect buildings and improvements on the property and to pay annual rentals to the University, these improvements are attached to
7 the freehold and become the property of the University. At the termination of these leases and the renewal thereof, the buildings and improvements thereon come into the possession of the University of the South. And in this way the University obtains the benefit of the improvements as well as the annual rentals and by this system it has greatly improved its property and at the same time secured an annual revenue with which to carry on and maintain the University. Under this system it is able to keep control of its property and keep off obnoxious people and contaminating influences inimical to the morals of the students and the interest of the University.

4. Complainant would now show the court that notwithstanding the facts herein stated, notwithstanding the University of the South was established at Sewanee on the faith of its charter contract with the State of Tennessee that it should, as set forth in section 10 of its charter, have 1000 acres of its domain exempt from taxation, the State of Tennessee and Franklin County, in the year 1887, attempted to assess and back-assess your complainant, the University of the South, on all of this 1000 acres that it had leased out under the terms and conditions hereinbefore set out. The University of the South filed an original injunction bill in the Chancery Court of Franklin County against A. J. Skidmore, who was at that time the trustee of Franklin County, to enjoin him from assessing and back-assessing said property. Franklin County filed a cross-bill in said cause, seeking to enforce the right of the County to assess and back-assess said property, insisting that said property by being leased out by the University of the South had lost its right of exemption from taxation.

The case was tried before the Chancellor and he decreed that all of said leased property, except that occupied by the professors and officers of the University was subject to taxation. On appeal this decree was reversed by the Supreme Court of the State of Tennessee, by which court it was held that neither the University property nor the leasehold estate were subject to taxation. The court held that the charter of the University of the South was a valid contract be-

tween the State of Tennessee and said University, under and by the terms of which the University of the South had a right to immunity from taxation, as long as the legal title to this 1000 acres remained in it. The court further held that the leasing out of the property was not a waiver of this right and that the property was still exempt from taxation, regardless of the same having been leased.

8 A certified copy of the record in said cause of the University of the South *vs.* A. J. Skidmore, Trustee, is herewith filed as Exhibit "A" to this bill and notice given that said record will be used and referred to for all proper purposes on the trial of this cause. The opinion of the Supreme Court of Tennessee in said cause is reported and published in 87 Tennessee, page 155 *et seq.*

5. After this decision of the Supreme Court, the complainant University of the South was not thereafter called upon to pay taxes on any of this property and its right of exemption, provided for in its charter, was respected until the issuance of the notices referred to in the next paragraph.

6. Complainants would now show the court that notwithstanding its charter exemption, notwithstanding the failure of the former attempt to *to* assess this charter, notwithstanding the holding of the Supreme Court of Tennessee that this contract of exemption was valid and applied to the property leased, as well as that actually occupied by the school buildings of the University, the State Revenue Agent for the Middle Division of Tennessee, on the — day of August, 1906, caused to be issued by the Trustee of Franklin County, Tennessee, notices to the complainants set out in the caption (except the University of the South) to appear before D. S. Osborne, the said Trustee of Franklin County, Tennessee, on the 13th day of August, 1906, for the purpose of being assessed and back-assessed for the years 1903, 1904, 1905, and 1906.

All of said complainants, other than the University of the South, are lessees from the University of the South, and all occupy under leases from said University of the South, lots which are a part of said reserved and exempted domain of the University of the South, hereinbefore set out and described. There also issued notices to the other lessees of the University of the South who held leases for lots in this 1000 acres reserved and exempted as follows:

A. T. O. Fraternity.
Arnold, W. G.
Arn, Mrs. Jno. G.
Adams, Mrs. J. C.
Anderson, W. P.
Barton, S. M.
Brazelton, H. W.
Childress, Alf. (colored).
Cotton, Mrs. S. S.
Castleberry, J. M.
Brooks, P. S.
Barnwell, Mrs. F. O.
Bryan, Bettie (colored).
Biery, Sam.
Bell, Mrs. G. W. C.
Biddle, Rich'd.
Betts, Mrs. M'M.
Green, Fred. (colored).
Galleher, Mrs. S. S.
Gailor, Bishop T. F.

Casteleberry, Mrs. M. J.
9 Colmore, R. L.
Campbell, White.
Conger, Iliff.
Corley, W. P.
Collins, J. H.
Collins & Riley.
Cain, Dr. J. S.
Douglas, Miss Elizabeth.
De Rosset, Rev. F. A.
Delta Tau Fraternity.
Du Bose, Racher (col.).
Du Bose, W. P.
Disharoon, G. I.
Ewing, Mrs. (Dr.) F. C.
Elliott, Miss S. B.
Elliott, Dr. Jno. B.
Elmore, Mrs. F. A.
Ewing, Rev. Quincy.
Fulmer, Mrs. C. M.
Farris, Dock.
Gischern, O. E.
Fischer, O.
Fischer, J. H.
Fairbanks, G. R.
Fairbanks, G. R.
Fairbanks, G. R.
Fairbanks, G. R.
Gray, Rev. A. R.
Gipson, Minerva.
Gipson, Mrs. Ida.
Green, Miss L. W.
Kappa Sigma Fraternity.
Kappa Alpha Fraternity.
Kirby-Smith, Selden.
Lebovitz, A.
Legare, Mrs. E. C. (Rev. Carey Beckwith.)
Lovell, Mrs. A. Q.
Leuzinger, Rudolph.
Long, John.
Mayhew, Miss C. A.
10 McCrady, Mrs. John.
Miller, Miss Mary.
Meyers, W. L.
Milhado, Miss S. E.
Mansfield, A.
Mansfield, A.
Mansfield, A.
Mansfield, A.
Mosely, Rufus (col'd).
Garner, W. T.
Gregory, H. A.
Holland, S. L.
Holland, S. L.
Holland, S. L.
Holland, S. L. (Bradford, J. C.)
Huger, Miss M. E.
Harrison, T. J.
Harrison, Jerry, Jr.
Hoge, Mrs. S. C.
Hoge, J. E.
Hodgson, Mrs. F. G.
Hodgson, Mrs. F. G.
Hamilton, Thos.
Holder, Mill (col'd).
Hawkins, Mrs. Wallace.
Hofer, Mrs. Martha.
Hall, Mrs. A. L.
Hardy, Miss Grace E.
Henneman, Dr. J. B.
Herrington, Mrs. Clayton.
Hall, Dr. W. B.
Hoskins, Henry.
Jackson, Mrs. R. W.
Johnson, Mrs. S. E.
Johnson, Mrs. S. K.
Judd, Spencer.
Johnson, A. S.
Kuntz, Emil.
Kirby Smith, Mrs. Cassie.
Kirby Smith, Mrs. Edmund.
Powell, Mrs. J. C.
Prince, Mrs. Alice.
Prince, W. J.
Prince, W. J.
Prince, J. P.

Pi Kappa Alpha Fraternity.
Ruef, C.
Ruef, C.
Ruef, C.
Ruef, C.
Rice, Zack.
Richardson, Mrs. S. E.
Rowe, Will (col'd).
Reese, Mrs. E. F.
Riley, Robt.
Riley, Mrs. Patsey.
Rachielles, J. E.
Rickett, Wm.

Messick, Mrs. Jeff (now Mrs. Jeff Fry.)
Mitchell, Robert.
Montgomery, Dr. W. A.
Mansfield, Miss Anna (recently married.)
Norwood, Mrs. Sam.
Nauts, W. B.
O'Dier, Susan.
Porcher, Miss M. L.
Phi Delta Theta Fraternity.
Phi Delta Theta Fraternity.
Powell, Jno. B.
Powell, Jno. B. (Winn's store).
Piggot, Dr. C.
Selden, Mrs. M. J.
Shepherd, David.
Thurmond.
Terrell, L. Curg.
Van Vleck, Mrs. A.
Van Ness, Mrs. Mary W. W.
Zangg, Wm.
Rutledge, Mrs. Dora.
Race, Mrs. O. C. K.
Stewman, Mrs. R. E.
Smedes, Mrs. S. D.
Short, Mrs. Frank.
Sutherland, J. O.
Sutherland, Mrs. Sam.
Sutherland, James.
Statum, John.
Schneider, Henry.
S. A. E. Fraternity.
Saterwhite, J. A. Estate (Mrs. E. B. Tucker).
Sisters of St. Mary.
Sutton, Mrs. E. C.
Wilmerding, Mrs. M. A.
Wadhams, Miss L. W.
Walker, I. T.
Winton, Harriet (col'd).
Wicks, Mrs. M. C.
Wells, Dr. B. W.
Wheat, W. H.
Wiggins, Mrs. B. L.

7. On the 13th day of August, 1906, complainants and the other lessees, by their attorneys, appeared before said David S. Osborne, Trustee, when the cause of Mrs. Hoeffer was called, heard and determined by said Trustee, when the complainants' attorneys presented to the Trustee the charter of the University of the South and the record in the cause of the University of the South *vs.* A. J. Skidmore, hereinbefore referred to and the holding of the Supreme Court in said cause, and insisted that said property was exempted from taxation by virtue of said charter and decision of the Supreme Court in said cause. The said trustee held, however, that
11 regardless of the provision of this chapter he was bound by — under the acts of assessment of 1903, Chapter 258, to assess and back-assess this property. The judgment of said trustee is as follows:

"*In re* motion of J. R. Jetton, State Revenue Agent, to assess for taxes for the year 1906, and to back-assess for the years 1903, 1904, 1905, the property of Mrs. M. Hoeffer, of Sewanee, Tennessee.

"On motion of J. R. Jetton, State Revenue Agent, notice having been given as required by law, and it appearing to the undersigned, D. S. Osborne, Trustee, that Mrs. Hoeffer is and has been since before January the 10th, 1903, the owner of a leasehold interest in a lot in Sewanee, in the 18th civil district of Franklin County, Tennessee, and the buildings thereon. Said lot is bounded on the north by

Thomas Hamilton; on the west by Main Street; on the south by University; and on the east by University. And it further appearing that the interest of Mrs. M. Hoeffer in said property is and has been, since before January 10th, 1903, worth $5,000.00, I hereby assess and back-assess to said Mrs. M. Hoeffer, the following property for the following years:

1903. Leasehold interest in lot and buildings thereon in Sewanee, 13th civil district of Franklin County, Tennessee, bounded on the north by Thomas Hamilton; on the south by University; on the east by University; and on the west by Main Street, value $500.00.

State tax.	Co. tax.	School tax.	Highway tax.	Pauper tax.	Bridge tax.	Total taxes.
$1.75	$1.50	$2.00	$0.75	$0.50	$2.25	$8.75

Together with interest from March 1st, 1904, and 15% penalty.

1904. Leasehold interest in lot and buildings thereon in Sewanee, 18 civil district of Franklin County, Tennessee, bounded north by Thomas Hamilton; on the south by University; on the east by University; and on the west by Main Street, value $500.00.

State tax.	Co. tax.	Highway tax.	Pauper tax.	Bridge tax.	School tax.	Total tax.
$1.75	$1.00	$0.75	$0.50	$0.50	$2.00	$6.50

1905. Leasehold interest in lot and buildings thereon in Sewanee, 18 civil district of Franklin County, Tennessee, bounded on the north by Thomas Hamilton; on the south by University; on the east by University; on the west by Main Street, value $500.00.

State tax.	Co. tax.	School tax.	Highway tax.	Pauper tax.	Bridge tax.	High school tax.	Total tax.
$1.75	$0.50	$2.00	$0.75	$0.25	$0.50	$0.25	$6.00

Together with 15% penalty.

Mrs. Hoeffer, by attorneys, appeared when this motion was heard, and resisted the motion of the said State Revenue Agent to assess and back-assess said property, and exhibited the charter of the University of the South, and the record from the Supreme Court of Tennessee in the cause of the University of the South *vs.* A. J. Skidmore, Trustee and Franklin County *vs.* University of the South and insisted that said property of Mrs. M. Hoeffer, being a part of the 1000 acres of the University of the South, which was by its charter and the opinion of the Supreme Court of Tennessee in said cause, exempt from taxation, the leasehold interest in said property was also exempt and said Mrs. Hoeffer, by attorneys, excepted to the action of the trustee in disallowing this exemption and in assessing and back-assessing said property, the trustee holding that said property is subject to assessment and back-assessment by virtue of the acts of 1903, Chapter 258 of the General Assembly of Tennessee. This August 13, 1906.

(Signed) D. S. OSBORNE, *Trustee.*

12 The said trustee continued the other cases against the complainants herein set out until September 10th, 1906, and announced that under the same facts as were shown in the case of Mrs. Hoeffer (and which do exist in the cases of the other complainants) he, the said trustee, would assess and back-assess the property of complainants in like manner.

8. This assessment and the proposed assessment to be made on the property of complainant is, under and by virtue of the authority conferred by the assessment act of the General Assembly of Tennessee, passed April 9th, 1903, approved April 16th, 1903, and published in the acts of that year, Chapter 258, page 632 *et seq.* Section 1 of the act provides:

"That all property, real, personal and mixed, shall be assessed for taxation for state, county and municipal purposes, except such as are declared exempt in the second section of the act."

The second section provides:

"That property herein enumerated and no other, shall be exempt from taxation."

The property enumerated consists of the property of the general government, state, counties and municipalities of the state. The act also exempts (as provided in sub-section 2 of section 2) the following described property:

"All property belonging to any religious, charitable, scientific, or educational institutions, when used exclusively for the purpose for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with like business that pays taxes to the State shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

There is also exempted cemeteries, public roads, certain classes of growing crops and manufactured articles.

No provision is made in this act for the protection of property exempted from taxation by charters of corporations and educational institutions, such as the complainant University, except by the terms of subsection 2 in the second section of the act above set out, which is much less comprehensive than the provision of section 10 in complainant's charter.

Subsection 5 of section 5 of this act provides as follows:

"That hereafter all mineral, timber, or other interests in fee, for life, or for a term of years in real estate in this state owned separate from the general freehold, shall be assessed to the owner thereof separate from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real estate."

Section 32 of the act provides as follows:

"That the assessed taxes on all real estate, personalty, railroad, telegraph, and telephone companies, and all damages or costs
13 accruing thereon, shall be and remain a first lien upon such property from the tenth of January of each and every year for the taxes of that year; and *and* said taxes shall, be a lien upon

the fee in said — and not merely upon the interest of the person to whom said property is or ought to be assessed, but to any and all other interests in said property, whether in reversion or remainder, or of lienors, or of any nature whatever, and the whole proceedings for the collection of taxes from the assessment to sale for delinquency shall be a proceeding *in rem*, and shall not be invalid on account of such land having been listed and assessed for taxation to any one as owner or owners or to any person or persons, not the owner or owners, or to unknown owner or owners."

This act also contains provisions for the back-assessment of omitted or inadequately assessed property, for penalties for non-payment of taxes, and for the sale of the property of delinquent property owners.

It will be noticed that this act attempts *to to* limit the scope of the exemption of educational institutions to property being actually used for purposes for which the institution was created, and the unimproved property. And expressly provides that if the property is used in "secular business," competing with a like business that pays taxes, it shall not be exempted from taxation.

It will also be noticed that this act changed the existing rule as to the taxation of leasehold estate. At the time of the granting of the charter to the University of the South, leasehold estates were assessed to the lessor. This was the law at the time complainants who are lessees, obtained their leases from the University of the South. This was the law at the time the attempt was made to assess this property in 1887, the attempt being in that case to assess the lessor, the University of the South, on these same leasehold interests; on the same property involved in this litigation, and in that case the Supreme Court held these leasehold interests exempt from taxation. Now by the act of 1903, sub-section five of section five, the Legislature of Tennessee attempts to change this rule and make the lessees liable for taxes.

At the time the charter was granted, the University was liable for taxes on every interest in the property. The State contracts to exempt this property of the University from all taxation. This exemption, under the law as it existed at that time, applied as well to leasehold interest as to any other interest in the property. It included the whole property.

In other words, at the time the charter was granted and at the time these contracts of leasage were executed, this entire property and every kind and character of interest in the same, was exempt from taxation; and this exemption became by operation of law a part of each and every contract in question. It is now insisted that the State has a right to impair the obligation of this charter con-
14 tract and all rights and contracts growing out of the same, by simply passing this act requiring the property to be assessed to the lessees.

9. As before shown, the act provides that the taxes assessed against the lessees under the act of 1903 are not to be a lien against the particular estate of the lessee, but it is provided in section 32 of the

act, that such taxes shall be a lien on the fee. The act further provides for a sale of the property to satisfy this lien. It will thus be seen that by the terms of this act, as construed and enforced by the State officials, the exemption provided for in section 10 of the charter of the complainant university is entirely avoided by the simple expedient of having the property assessed against the lessees and then providing that the title of the university be sold to satisfy same.

10. As before shown, the University of the South derives an important part of its necessary revenue by which it is maintained, from rents received from its co-complainant lessees. While, as before shown, the taxes complained of in this bill have been assessed and will be assessed against the lessees, it is none the less taxation against the University of the South, because it is a tax on the rental value of the property, and will necessarily decrease the amount of rents received from the lessees. The fact that this property was exempt from State and County taxation was taken into consideration in fixing the amount of rent to be paid to the university at the time these leases were executed; and as these leases are all renewed, and as new leases are executed, it will be impossible for the university to collect the same amount of rental as it otherwise could, because the amount of taxes to be paid would necessarily be taken into consideration and be deducted from the amount of rents which the lessees would otherwise be able and willing to pay. In this way, this whole tax will be a direct burden on the University of the South, and will greatly impair, if not practically destroy, the revenue it would otherwise receive from this property; and it would impair and absolutely destroy the force and effect of its charter exemption, so far as this leased property is concerned. The lessees are merely the agencies through whom these officers are seeking to tax this property of the university.

11. Complainants charge that the Act of the General Assembly of 1903 hereinbefore referred to, as construed and enforced by the *the* officials of the State of Tennessee, impairs and practically nullifies the contract between the University of the South and the State of Tennessee, as set forth in section Ten of the charter of said university, as herein before recited; and this is in derogation of section 10, Article 1 of the Constitution of the United States, prohibiting any state from passing any law impairing the obligation of a contract.

12. Complainants charge that this act of 1903, providing that taxes assessed against the lessee shall become a lien on the title of the *woner* of the property without any notice or process to the owner, has been sustained as a valid law by the Supreme Court of Tennessee, and that by and under the terms of the act, as construed and enforced by the courts and officials of the State of Tennessee, it is provided that the exemption contract between the State of Tennessee and the University of the South shall not only be nullified, but that the property of the University of the South shall be sold for taxes assessed against its tenants without notice or any process whatever as to the University of the South, and without giving said University

any chance to be heard, and without providing any remedy whatever to said University of the South. Complainants, therefore, charge that this act violates the Fourteenth Amendment to the constitution of the United States, in that it provides for the taking of the property of the University of the South without due process of law, and because it denies to all of said complainants the equal protection of the laws.

13. Complainants charge that there is no remedy whatever for the University of the South provided by this act, or any other act in Tennessee; and that there is no adequate remedy for any of the complainants. As before shown, the trustee, who is the judge provided for by this act of 1903, to hear and determine the question of liability, has already heard and decided the case against Mrs. M. Hoeffer and in that case denied the University of the South and complainants the benefit of the exemption contract between the University of the South and the State of Tennessee; and has announced that he will so decide all of the cases against complainants; and complainants bring this bill in order to avoid a multiplicity of suits; and in order that this question may be determined in one cause, each case involving exactly the same question with reference to the same property, with reference to the same contract, and with reference to the validity of the same statutes, and all being a lien under the statute on the property of the same owner, the University of the South.

14. The complainant University of the South charges that under and by the terms of the act of 1903, as before shown, the judgment of S. S. Osborne, Trustee, against Mrs. M. Hoeffer is a lien upon the title of the University of the South and a cloud upon its title; and if judgments are rendered in the cases against the other com-
16 plainants herein, they will be liens upon the title of the complainant university and clouds upon its title.

15. Complainants would show the court that the amount involved is largely in excess of the sum of two thousand dollars, exclusive of costs and interest; that the aggregate of the taxes which will be a lien on the title of the University of the South and cloud upon its title will be largely in excess of the said amount, exclusive of costs and interest.

The University would further show the court that the actual injury to the rental value of its leas-hold interests now in existence will be largely in excess of two thousand dollars, exclusive of costs and interest.

The value of the exemption provided for in the charter and denied by the authorities of Tennessee as herein shown exceeds the sum of two thousand dollars, exclusive of costs and interest.

The value of the property of the University of the South against which the defendants are seeking to illegally assess taxes as herein shown, exceeds the sum of two thousand dollars, exclusive of interest and costs. The defendants insist that they are now attempting to assess the complainants' property exceeding $14,000.00 in taxes, which will be a lien and cloud upon the title from the time assessed.

The property leased by each of the other complainants exceeds *the*

value the sum of two thousand dollars and the right of exemption which is sought to be confiscated and destroyed exceeds the sum of two thousand dollars.

16. Complainants charge that they have no adequate remedy at law and that unless these proceedings complained of are restrained by the fiat of this court the injury to complainants will be great and irreparable.

17. Complainants would further show the court that although the Supreme Court of Tennessee has heretofore sustained as a valid exemption from taxation, its contract with the State and held that neither the leasehold interest nor any other interest in said property could be legally assessed for taxation, still they are advised that this holding of the Supreme Court is no protection to either the University of the South or its lessees, except for the taxes actually involved in said litigation. Complainants are advised that under the holding of the Supreme Court of Tennessee, its adjudication upon a tax question, or on a question of exemption from taxation, is not binding as *res adjudicata* except as to the taxes actually involved in the particular litigation. It therefore results that although
17 the University has been to the trouble and expense of having litigated this question through all the courts of Tennessee once before, it and its lessees are again called upon to litigate the question with the representatives of the State and County, and however the question might be now decided by the courts of Tennessee, it would still be no protection to the complainants and would have no binding force and effect, except as to the taxes actually involved. Complainants' right guaranteed and protected by the Constitution of the United States are this constantly assailed and threatened by the authorities of the State acting under and by virtue of the assessment laws of the State, from which complainants have no remedy in the courts of the State, except to litigate the question over again each succeeding year.

Complainants are advised that the decrees and decisions of the courts of the United States on questions of taxation and exemptions from taxation have as much binding force and effect as the decisions of the court on any other question and a decree of this court on this question now, would forever settle the right of the State and County to assess for taxation the property of the University of the South, exempt from taxation under its charter contract with the State of Tennessee; and complainants are therefore advised and charge that they have a right to come into this court and have this question finally and forever settled, to prevent continuous and vexatious litigation, and to restrain the actual and threatened invasion of their rights which are guaranteed and protected by the constitution of the United States.

18. Complainant University of the South charges that it is still the owner of the legal title to all of the thousand acres hereinbefore described; and it is advised and charges that the exemption provided for in the charter is to the property itself, although for the benefit of the University; and that this exemption from taxation

protects all the interests in and to the property so long as the legal title remains in the complainant University.

19. The defendant, J. R. Jetton, is the State Revenue Agent for Middle Tennessee, whose duty it is, under the law of the State, to represent the State in the collection of revenue and in procuring the assessment and back-assessment of inadequately assessed and omitted property. The said Jetton, as Revenue Agent, began proceedings complained of in this bill and as such official is prosecuting these claims against complainants.

The defendant, David S. Osborne, is the trustee for Franklin County, Tennessee, whose duty it is to collect for the State and County taxes for that County and to assess and back-assess omitted or inadequately assessed property. He is a resident and citi-
18 zen of Franklin County Tennessee, in the Middle District of said State.

The said J. R. Jetton is a resident and citizen of Rutherford County in the Middle District of Tennessee.

20. Complainants further represent and show that the University is and for many years has been the owner of a body of about 10,000 acres of land in said county and that the said 1000-acres reservation was set apart out of that large tract of land as hereinbefore shown. The University has heretofore also leased or rented to certain persons as tenants about eighteen in all, small parcels of said lands outside of said 1000-acres reservation and under leases substantially the same in form as the lease heretofore mentioned in this bill. Said outside tenants are as follows, to-wit:

White Campbell	$12.50
O. E. Fisher (2)	12.50
J. H. Fisher	12.50
Harrison, C. J	12.50
Mitchell, Robt.	12.50
Montgomery, W. H	12.50
Norwood, Mrs. S	6.25
Prince, J. P	12.50
Rice, Z. H	12.50
Sherman, Mrs. R. E	12.50
Entherland, J. O	12.50
Schneider, Henry	12.50
Statum, John	12.50
Sisters of St. Mary	12.50
Sewell, Cong.	12.50
Walker, J. T	12.50
Wheat, W. H	6.25

As has been hitherto shown, the original charter of the University of the South was granted in 1858, but in January, 1860, the legislature, in considering the peculiar character of the proposed institution, its isolation and its necessary development by the creation of its own environment, by an amendment passed at the session of January, 1860, gave certain municipal privileges to the University,

and in order to more effectively exercise these privileges an officer of the University, the Commissioner of Buildings and Lands, Major G. R. Fairbanks, made application to the Chancery Court of Franklin County for an explication and amendment thereof, but as the court was without jurisdiction and the proceedings void no action by the University was ever taken; nor were the municipal privileges ever exercised by the corporation thereunder. At the same time the use of the phrase, "Taxes and Assessments" in the form of lease originally adopted and which has been adhered to, referred only and solely to the matter of municipal taxes and assessments at one time contemplated.

21. Premises seen, complainants pray:

1st. That they be permitted to maintain this suit on behalf of themselves and the other lessees herein named.

19 2nd. That the regular process of this court issue to make said J. R. Jetton, State Revenue Agent and said David S. Osborne, Trustee for Franklin County and the County of Franklin, defendants to this bill. Let them answer, but not under oath, same being expressly waived.

3d. Let a writ of injunction issue to restrain the said Revenue Agent and the said trustee from further proceeding with the assessing and back-assessing of the property of the University of the South. Let them be restrained from proceeding to assess the leasehold interests of complainants in and to any part or parcel of the one thousand acres reserved and exempted domain of the University of the South.

4th. Let the said Osborne be restrained from attempting to collect the taxes assessed against Mrs. M. Hoeffer on her leasehold interest in said property.

5th. Let the said Osborne, trustee, be restrained from attempting to advertise for sale or attempting to sell any part of the said one-thousand acres exempted property of the University of the South for the taxes assessed against Mrs. M. Hoeffer of any one else.

6th. On the final hearing, decree that the charter contract be-ween the State of Tennessee and the University of the South absolutely exempts all and every part of the one thousand acres hereinbefore described from taxation or assessment and that under and by the terms of said contract all and every interest in said property is exempt from taxation and assessment so long as the legal title remains in the University of the South.

7th. Remove the alleged assessments herein complained of as clouds upon the title of the University of the South.

8th. Make the injunction herein prayed for perpetual.

9th. Grant all other, further and special relief that complainants may be entitled to, and grant general relief.

10th. This is the first application for an injunction in this cause.

CROWNOVER & CRABTREE,
SPEARS & LYNCH.

A. T. McNEAL.
W. L. MYERS.

STATE OF TENNESSEE, *County of Franklin, ss:*

Personally appeared before me, the undersigned authority B. L. Wiggins, Vice Chancellor and Chief Executive Officer of the University of the South and complainant in the above-styled cause and made oath in due form of law that the facts stated in the above are true to the best of his knowledge, information and belief.

B. L. WIGGINS,
Vice-Chancellor of the University of the South.

Sworn to and subscribed before me this the 7th day of September, 1906.

ILIFF CONGRE,
Notary Public.

[SEAL.]

Endorsed: Filed Sept. 8, 1906, H. M. Doak, Clerk, By E. L. Doak, D. C.

20 The following writ or subpœna to answer was issued, viz:

The President of the United States of America to the Marshal of the Middle District of Tennessee, Greeting:

You are hereby commanded to summon James R. Jetton, State Revenue Agent, of Tennessee and David S. Osborne, Trustee of Franklin County, Tennessee, within the Middle District of Tennessee, the former being a resident citizen of the county of Rutherford and the latter a resident citizen of Franklin County, if to be found in your district, to be and appear before the judges of the Circuit Court of the United States in the Sixth Circuit, for the Middle District of Tennessee, at the federal court room at Nashville in said State, on the 5th day of November, 1906, next, then and there to answer the bill of complainant of the University of the South of Sewanee within the Middle District of Tennessee and a resident citizen of Franklin County, Tennessee, seeking injunction, etc.

Herein fail not and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 18th day of September, 1906, and of the Independence of the United States the one hundred and thirty-first year.

H. M. DOAK, *Clerk*,
By E. L. DOAK, *D. C.*

MEMORANDUM.—The defendants are required to enter their appearance in the office of the clerk of this court on or before the 5th day of September, next and plead, answer or demur, or the bill will be taken for confessed and set down for hearing *ex parte*.

H. M. DOAK, *Clerk.*

Endorsed: No. 3481. U. S. Circuit Court. University of the South *vs.* J. R. Jetton, State Revenue Agent *et al.* This summons issued on the 18th day of September, 1906. Spears & Lynch Attorneys.

Returned: Within writ came to hand Sept. 20, 1906, and served by reading to David S. Osborne, Trustee of Franklin County, Tennessee, on Sept. 24, 1906, and upon James R. Jetton, State Revenue Agent of the State of Tennessee, on Septe. 28, 1906, in the City of Nashville, Tennessee and delivered copy of th- writ etc., to David S. Osborne.

JOHN W. OVERALL,
Marshal, U. S.
Per J. M. DUGGAN,
Deputy Marshal.

21 The following fiat was made upon the foregoing bill by the Hon. C. D. Clark, in chambers at Chattanooga, Tennessee, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON ET AL.

Whereas in the above cause a motion for the issuance of a preliminary writ of injunction has been duly filed, the hearing thereof being fixed for the 24th day of September, 1906, at the United States Court Room in the Custom House at Chattanooga, Tennessee, at 10 a. m., and it having been made to appear that there is danger of irreparable injury being done to complainants before the hearing of said application for the writ of injunction unless the said defendants are, pending such hearing, restrained as herein set forth; therefore complainants' application for such restraining order is granted upon their giving bond in the sum of $2,500.00.

Now, therefore, take notice that you, James R. Jetton, D. S. Osborne, Trustee of the County of Franklin and the County of Franklin, defendants here, your agents, servants, and attorneys, and each of you, are hereby specially restrained and enjoined from proceeding with the assessment complained of in the bill of complaint in this cause and from, in any manner, attempting to assess or collect taxes from any of the lessees of the University of the South on any part of or any interest in the 1000 acres of land or improvements thereon described in complainants' bill, or from in any manner attempting to carry out the provisions of the statute complained of in the bill with reference to the assessment or collection of taxes on said property, until the hearing upon said application for a writ of injunction and the further order of the court in the premises.

This September 7th, 1906, 4-15 p. m.

C. D. CLARK, *Judge.*

22 The following writ of restraint was thereupon issued under and by authority of said restraining order, viz:

The President of the United States of America to the marshal of the Middle District of Tennessee, Greeting:

You are hereby commanded to make known unto James R. Jetton, State Revenue Agent, a citizen of Rutherford County and David S. Osborne, Trustee of Franklin County and a citizen of said county, both resident citizens of the Middle District of Tennessee, the following restraining order:

"Whereas in the cause of the University of the South *et al. vs.* James R. Jetton Revenue Agent *et al.*, it has been made to appear upon the bill of complaint filed herein, etc., that a writ of injunction preliminary to the final hearing is proper and that *prima facie* the complainant is entitled thereto, enjoining the defendants named herein from the acts complained of and threatened to be committed.

"Now on motion of said complainants it is ordered that the said defendants appear before the Circuit Court of the United States for the Middle District of Tennessee in the Sixth Circuit, at the United States court room in the city of Chattanooga, Tennessee, at 10 o'clock a. m. on the 24th day of September, 1906, and then and there show cause if any they have why the preliminary injunction therein prayed for should not be granted and issue, and it appearing to the court that there is danger of irreparable injury being caused the complainants unless the said defendants are, pending such hearing, restrained as therein set forth.

Now, therefore, take notice, that ye, James R. Jetton, State Revenue Agent, and D. S. Osborne, Trustee of the County of Franklin, and the County of Franklin, defendants herein, your agents, servants, attorneys, and each of you, are hereby specially restrained and enjoined from proceeding with the assessment complained of in the bill in this cause and from in any manner attempting to assess or collect taxes from any of the lessees of the University of the South or any part of or any interest in the 1000 acres of land or improvements thereon, described in complainant's bill, or from in any manner attempting to carry out the provisions of the statute complained of in the bill with reference to the assessment, or collection of taxes on said property, until the hearing upon said application for a writ of injunction and the further order of the court in the premises."

"C. D. CLARK, *Judge.*"

And therefore you will make known unto the said James R. Jetton, State Revenue Agent, and D. S. Osborne, Trustee of Franklin
23 County, Tennessee, the above order and enjoin them from doing or having done any of the things therein enumerated, they, their agents, attorneys, or servants, until the further order of the court. And due return make of how you have executed this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this September 8th, 1906.

H. M. DOAK, *Clerk,*
D. E. L. DOAK, *D. C.*

Endorsed: No. 3481. University of the South *vs.* James R. Jetton State Revenue Agent *et al.* Restraining Order. Issued September 8, 1906. H. M. Doak, Clerk. Original.

Returned: Within writ came to hand Sept. 10th, 1906, and served same day received (Sept. 10) upon David S. Osborne, Trustee of Franklin County, Tenn., at Winchester, Tenn., and upon James R. Jetton, State Revenue Agent, on Sept. 17, 1906, by reading to each and delivered copy to David S. Osborne.

JOHN W. OVERALL,
U. S. Marshal,
Per J. M. DUGGAN,
Deputy Marshal.

The following demurrer was filed to the foregoing bill, viz:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON ET AL.

The Joint and Separate Demurrer of the Defendants, James R. Jetton, State Revenue Agent of Tennessee, and David S. Osborne, Trustee of Franklin County, Tennessee, and of Franklin County, Tennessee.

Come now the defendants named in the above-entitled cause, and by way of protestation, neither admitting nor denying the allegations of complainant's bill, demur thereto and for grounds of demurrer show unto your Honors:

1. This court has no jurisdiction to hear and determine this cause, for the reason that both complainants and defendants are citizens of the State of Tennessee and it is not shown in the bill that complainants' rights under the laws or constitution of the United States have been, or are about to be violated by reason of the matters alleged against these demurrants.

2. These demurrants especially demur and say that this bill cannot be maintained by complainants other than the University of the South and that this court has no jurisdiction to hear and determine this cause on behalf of said complainants for the reasons set out in the first ground above assigned.

3. The proceedings sought to be enjoined are in fact and
24 legal effect a suit instituted by the defendant Jetton for and on behalf of the State of Tennessee and Franklin County, before and in a state tribunal and court, with due notice to the parties against whom said suit is brought according to the laws of Tennessee, to collect the lawful taxes due from said parties, and in such case this court is without power to grant an injunction to enjoin, restrain or interfere with said proceedings in said state court.

4. The defendant, James R. Jetton, as the Revenue Agent of the State of Tennessee, especially demurs and says that this court is without jurisdiction to hear and determine this cause, for the reason that this suit is in legal effect a proceeding against the State of Tennessee to enjoin her from prosecuting her suit instituted before the Trustee of Franklin County as a special court or tribunal to enforce taxes

due her from certain parties other than the complainant University of the South.

5. The bill does not make a case cognizable in a court of equity and said bill is without equity on its face and fails to show that complainants will suffer irreparable injury by reason of the matters complained of.

6. The bill shows that complainants have a full, complete and adequate remedy at law and under the laws of Tennessee, either by appeal, duly provided by the statute, from the judgment of the special court or tribunal before which the proceedings sought to be enjoined are pending and certiorari to the Circuit Court of this State and appeal therefrom to the Supreme Court of the State, or by payment under protest of the taxes involved and suit to recover the same under and in the manner provided by the statutes of Tennessee, which afford a complete and adequate remedy to every taxpayer and forbid the issuance of an injunction to restrain or interfere with the due and proper collection of such taxes.

7. Demurrants especially demur and say that this bill cannot be maintained by complainant University of the South, because it appears upon the face of said bill that no taxes are sought to be assessed against the land owned by the said complainant and which under and by virtue of the laws of Tennessee is not subject to taxation, but is exempt.

8. These demurrants especially demur and say that this bill cannot be maintained by complainants, other than the University of the South, for the reason that the exemption granted by the State of Tennessee to said University of the South in respect of the one thousand acres of land described in the tenth section of its charter, is personal to the University of the South and does not extend,
25 or give protection to the property rights of the other complainants in their leasehold interests in and improvements erected upon said lands.

9. For misjoinder of parties and multifariousness in said bill, in that the interests of the complainants other than the University of the South, are wholly distinct from the rights and interests of said complainant university, and are no way so connected as to entitle them to maintain this joint action.

10. These demurrants especially demur and say, that even if complainants should be entitled to maintain this bill on behalf of themselves, they have no right to maintain the same for and on behalf of other lessees or leaseholders who are in no way made parties to this suit but who are being proceeded against by the State of Tennessee through and in the name of defendant Jetton before its special court and tribunal provided by the laws of Tennessee, to assess and enforce taxes lawfully assessable in its favor.

Wherefore these demurrants pray the judgment of the court, etc.

THOS. B. LYTLE,
Attorney for J. R. Jetton, Rev. Ag't.
LYNCH & PHILLIPS.

FRANK L. LYNCH.
CHAS. T. CATES, JR.,
Attorney General.

Endorsed: Filed October 11, 1906. H. M. Doak, Clerk, by E. L. Doak, D. C.

26 The following answer was filed, viz:

In the United States Circuit Court at Nashville.

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON, State Revenue Agent, *et al.*

To the Honorable the judges of the Circuit Court of the United States for the Middle District of Tennessee, sitting in equity at Nashville, Tennessee:

The answer of James R. Jetton, State Revenue Agent, a citizen and resident of Rutherford County, Tennessee, David S. Osborne, trustee of Franklin County, Tennessee, and a citizen and resident of said county and state and of the County of Franklin, one of the political divisions of said state of Tennessee, to the bill of complaint filed against them by the University of the South in the above entitled cause.

These respondents, not waiving the many errors and inaccuracies in said bill contained, but reserving the benefit of every exception thereto, for answer to said bill, in so far as they are advised it is necessary or material for them to answer, answering say:

1. They admit that the complainant University of the South is a corporation, chartered and organized by the General Assembly of the State of Tennessee for the purposes set forth in its charter, and which these respondents suppose is correctly set out and copied into the original bill, but they reserve unto themselves the right to show any errors in said copy.

Respondents do not and therefore cannot admit the allegations of the bill in respect to the history of the organization of complainant university, and the various steps taken by the founders of that institution, but, outside of the fact that said charter was duly accepted and an organization had thereunder, respondents are advised that said allegations, even if true, are wholly immaterial.

Respondents have no personal knowledge of the number of acres acquired by the complainant university, or that in November, 1861, it had surveyed out of the acreage acquired one thousand acres, to be then and thereafter known as the University Reservation, and, in so far as the allegations of the bill in respect of this matter may be material to the relief sought by the complainant, strict and legal proof of such allegations is required.

2. And further answering said bill, and particularly the second paragraph thereof, respondents admit that complainant uni-
27 versity has various departments, as alleged in said paragraphs and that there are resident at Sewanee the deans of the various

departments, the officers, professors and teachers of the University. There are also numerous boarding houses for the accommodation of the University and others directly and indirectly connected with complainant university, living at Sewanee; but respondents deny the allegations of the bill to the effect that practically all of the business done at Sewanee is either directly or indirectly connected with the university. The facts are that Sewanee is a thriving business town of about one thousand inhabitants, only a small number of whom are connected with the university, either directly or indirectly. The town of Sewanee is a very popular summer resort and a large number of people own summer homes there, who are in no way connected or interested in complainant university. There are a number of merchants doing business in Sewanee, who are supported in their business by the trade of farmers from the valleys near by, and of the people connected with the various timber and coal industries in and around Sewanee and of the public generally in that community; and said merchants derive very little support from complainant university, as complainant conducts a large supply store on its own account for the benefit of itself and its students.

The town of Sewanee is also a large shipping point for various kinds of lumber, coal, building stone, etc., and there is located at Sewanee also a large manufacturing plant erected upon the property of the university by the owner, leased from said university.

3. And further answering said bill and particularly the third paragraph thereof, respondents say that it is true that complainant university has leased out of its domain to many persons, building lots for various terms, as they are informed, ranging from ten to thirty-three years, by written instruments of leases, most of which provided for renewals; and that, under such leases, the lessees are required to erect buildings and improvements on the property so leased to them, and to pay an annual rental to complainant university. It is also true that the improvements erected by the lessees of complainant university have a physical attachment or connection with the ground upon which they are located, but respondents deny that these buildings or improvements are the property of complainant university, as alleged in the bill, and respondents deny that, at the termination of said leases and the renewals thereof, said buildings and improvements upon the lots so leased to said lessees come into the possession of complainant university, as alleged in the bill, or in any other manner, except as herein shown. In order that your Honors
28 may more fully understand this question and the relative rights of complainant university and its lessees in and to the leased property and the improvements thereon, respondents refer to the form of lease which is used by complainant university in its dealings with and leases to its different lessees, which is a part of the record made an exhibit to the original bill.

Respondents show that in and by said leases it is, among other things stipulated that each of said lessees shall pay a certain annual rental for the leased property, and in addition thereto shall pay "all taxes and assessments upon said premises," and in order that the lessees may be fully protected, not only in the enjoyment but the

actual ownership of the buildings and improvements placed by them upon said leased premises, it has been and is further provided in said leases as follows:

"And it is further agreed: That the said premises shall not be sublet, nor this lease assigned or transferred, without the consent in writing of the Commissioner of Buildings and Lands. And it is further covenanted and agreed that any violation of the above restrictions and provisions shall cause this lease to end and determine, with a right to said party of the first part to re-enter upon said premises. And it is further agreed that in all cases of transfer, the University of the South shall have the refusal. And at the expiration of the present term, the University of the South shall have the option of taking the premises by paying for all such improvements made thereon, or may renew the lease for another term of — years, on such terms as may be agreed upon by the parties respectively, and may also give a second renewal for — years; and in case the parties cannot agree upon the value of the improvements or the rental to be paid for the new term, the same shall be determined by arbitration, one of the arbitrators to be selected by the Commissioner of Buildings and Lands and the other by the lessee; and in case they cannot agree they shall call in an umpire—provided, however, that in fixing the rental for the new term, the value of the improvements shall not be taken into account as against the said party of the second part, — heirs or assigns. And it is further agreed that im-rovements to the value of — hundred dollars be made and kept on said premises by party of the second part."

And therefore respondents aver that the buildings and improvements placed and erected by the different lessees upon the property leased to them by complainant university, belong to such lessees and can only come into the possession of the complainant university and become its property at the end of each of said leases, upon the payment by complainant university to each of said lessees of the value of the improvements upon each of said leased premises.

4. Further answering the said bill, and particularly the fourth paragraph thereof, *r*espondents admit that about the year 1887, the officials of the State of Tennessee and County of Franklin attempted to assess and back-assess the property of complainant university, and that thereupon said complainant filed its original injunction bill in the Chancery court of Franklin County against the trustee of said county, for the purpose of enjoining him from assessing and back-assessing said property. It is also true that in that cause the
29 *the* County of Franklin filed a cross-bill seeking to enforce its supposed right to assess taxes against said property as the property of complainant university, alleging that by lea-ing out said property the said university had lost the exemption granted in its charter. It is also true that said cause was tried before one of the chancellors of Tennessee, who decreed that complainant university was liable to taxation on its real estate, except on that occupied by its professors and officers of the university, but on appeal to the Supreme Court of Tennessee said decree was reversed and the bill dismissed and it was held that complainant university had not lost

or parted with its exemption by reason of th- uses made by it of its property in leasing the same out to different persons, but respondents deny *that* the allegations contained in said fourth paragraph that the Supreme Court of Tennessee held and decreed that the leasehold estates were not subject to taxation.

It is true that a certified copy of the record in said University of the South *v.* Skidmore, trustee, is exhibited with the bill and that the opinion of the Supreme Court is officially reported in volume 87 of the Tennessee reports at pages 155 *et seq.* and an inspection of said record and of the opinion will show that the question of taxing the leasehold estates or the interests of the lessees under their respective leases was not before the courts of Tennessee and was not adjudicated in said cause. In fact the lessees owning the improvements upon the leased premises were not before the court in said cause.

5. Further answering the bill and particularly the fifth paragraph thereof, your respondents admit that after the decision of the Supreme Court of Tennessee in said cause of the University of the South *v.* A. J. Skidmore, trustee, no further effort or attempt has been made by any officer of the State of Tennessee or County of Franklin to assess any of the property of complainant University of the South lying within what is claimed by it as *its* reservation of one thousand acres, for taxes of any kind; and not only have the officials of the State of Tennessee and the County of Franklin not attempted to assess said property for taxes, but they have at all times recognized that said property owned by complainant university is exempt from taxation, or any lien or charge on account of taxes of any kind whatsoever, in the manner and to the full extent adjudicated by the Supreme Court of Tennessee as hereinbefore shown.

6. And further answering said bill, and particularly the sixth and seventh paragraphs thereof, your respondents show unto your honors that respondent James R. Jetton is one of the Revenue
30 Agents for the State of Tennessee, and is clothed with power to institute proceedings for the purpose of having property assessed properly which has escaped assessment, and it coming to his knowledge that the interests of the lessees of complainant university in the improvements erected by them under their respective leases upon property leased from complainant university had been omitted from assessment and taxation, it became and was his duty under the laws of the State of Tennessee, and particularly under chapter 258 of the Acts of the General Assembly of 1903, to institute proceedings to the end that said property, rights and interests of said lessees be properly assessed and taxed, and, therefore, on the — day of August, 1906, he caused proper notices to be issued by the trustee of Franklin County, Tennessee, and served upon the various lessees of complainant university, summoning them to appear before said trustee of Franklin County, respondent D. S. Osborne, who under the statutes of Tennessee is constituted a special tribunal for the hearing and determination of such cases. Said notice required said lessees to appear before said tribunal on the 13th day of August, 1906, to show cause why their respective interests in said properties under their several leases should not be assessed for taxation for the years, 1903,

1904, 1905, and 1906, but no notice was served upon complainant university, nor was any effort made to assess either it or its property for taxation.

Respondents further show that it is true that, on August 13th, 1906, said lessees, by their attorneys, appeared before said trustee as required by the notices served upon them, pursuant to law, when the proceedings instituted against Mrs. M. Hoeffer, one of said lessees, was called and proof having been introduced, was heard and determined by said trustee, who held "that the interest of Mrs. Hoeffer" in the property covered by her lease was subject of taxation and said interest was accordingly assessed for the years, 1903, 1904, 1905, and 1906. The judgment of said trustee in such cause against Mrs. M. Hoeffer is set forth with substantial accuracy in the seventh paragraph of complainant's bill. It is true that the proceedings against Mrs. Hoeffer were defended by counsel for complainant, but these respondents are under the impression that said counsel did not so much represent Mrs. Hoeffer as they were representing complainant university.

It is also true that after the hearing of the cause against Mrs. Hoeffer, the trustee announced that under the same facts as were shown in that case, he would hold that the interests of the other lessees under their leases in the several parcels of property
31 covered by said leases was subject to taxation, and thereupon counsel for complainant university, on behalf of said university and the other lessees, as was stated, asked for and secured a continuance of the hearing against the other lessees until September 10th, 1906, before which date the original bill in this cause was filed.

It is also true that Mrs. Hoeffer, by her attorneys, excepted to the action of the trustee in assessing her interest in said property for taxation, but she contented herself with such exception, and did not prosecute an appeal from the action of said trustee, sitting as a special tribunal, to the State Board of Equalization, as she would be entitled to do under the statutes of Tennessee. The State Board of Equalization is a tribunal specially clothed with power to hear and detrmine appeals from the trustee sitting as a special tribunal for the assessment of taxes.

7. And further answering said bill, respondents admit that the assessment against Mrs. Hoeffer and the proposed assessment against the other lessees, was under and by virtue of the authority conferred by chapter 258 of the Acts of the General Assembly of 1903, as alleged in the eight- paragraph of complainant's bill. It is also true that said assessment act contains, among other things, the provisions mentioned in section eight of said bill, but it is not true that the second section of said act enumerates all of the property which cannot be taxed under the laws of the State of Tennessee; that is, does specify all property which is exempt from taxation under the laws of the State of Tennessee. Said section 2 of said act only purports to enumerate the property which the General Assembly has power to exempt from taxation, but under the constitution of the State of Tennessee, as construed by the Supreme Court of said State, all property which the General Assembly, under the power

vested in it by the constitution of 1834, had exempted from taxation prior to the constitution of 1870, remains and continues exempt, and the officials of the State of Tennessee are without power to assess said property for taxation; and while such property cannot be taxed and its exempt character is recognized, nevertheless, it has not been considered necessary to set out and specify the same in the several acts of the General Assembly relating to the assessment of property, in which acts it has only been shown those precise exemptions which the legislature, under the constitution of 1870, is authorized to make.

Respondents further show that while it is true that by section 34 of the assessment act of 1903, it is provided that all taxes
32 shall be a lien upon the fee of the real estate against which it is assessed, nevertheless, the State and County cannot have a lien upon that property or interest in property which is exempt from taxation, and no claim has ever been made or was made, in the proceedings instituted by respondent Jetton, representing the State of Tennessee and county of Franklin, that the interest of complainant university in the leased premises could be assessed for taxation, or in any way affected by the proceedings so instituted. On the contrary, the State of Tennessee and the County of Franklin has, since the decision of the Supreme Court of the State in the case of University of the South *v.* Skidmore, above referred to, recognized the right of complainant University of the South to exemption as declared by the Supreme Court, and have not sought in any way to assess or levy any tax whatsoever against said complainant University of the South or against any interest which it has in said property. And your respondents here and now disclaim any intention of assessing or levying any tax whatsoever against the property of complainant university and deny that the assessment of the interests of the several lessees of complainant university in the buildings and improvements erected by them upon said property would in any manner affect the interests of complainant university.

8. And further answering said bill, respondents deny that chapter 258 of the assessment act of 1903, or any provision thereof, when construed with reference to *to* the constitution of the State of Tennessee and the protection thereby conferred upon the contracts of the State, in any manner impairs the obligation of a charter contract of complainant university, and they deny that the proposed assessment for taxation of the interests of the lessees of complainant university, under the respective leases, in any manner impairs the obligation of said charter contract.

Respondents further aver that the exemption granted by said charter of complainant university is personal to it, and respondents have not attempted and do not intend to attempt to assess or back-assess for taxation any interest of the University of the South in the thousand acres covered by section 10 of its charter.

Respondents again show and aver that they have merely attempted to assess for taxation the interests of the respective lessees of said property and they respectively insist that said lessees are in no manner protected by said charter exemption, because such exemption was intended alone for the benefit of complainant univer-

sity and for the further reason that each and every one of
33 said lessees in their several leases or contracts with complainant university have expressly agreed to pay all taxes assessed against said property.

Respondents further show your Honors that no lien can be claimed upon the property of complainant university or any interest of complainant university in said property, under and by virtue of section 32 of said act of 1903, because said property is exempt under and by virtue of the constitution of the State of Tennessee and any attempt under said section either to create or enforce a lien upon said property would be in contravention of the constitution of Tennessee, and the person or persons making such effort would not be acting under or by virtue of any law in the State of Tennessee; but no such construction has been placed upon said section, nor have the respondents claimed, nor will they claim, any lien upon the interests of complainant university. Further they have — attempted, nor will they attempt, to sell the interest of complainant university *Further, they have not attempted, nor will they attempt, to sell the interest of complainant university* to satisfy the assessment against the interest of the lessees.

Further answering, respondents deny that at the time the charter was granted complainant university, an interest in real estate, such as is owned by the lessees in this case could not under the law be taxed; they deny further that at the time of the execution of the various leases the interest of the lessees was not taxable under the law and they deny that the Supreme Court of Tennessee has ever held that such leasehold interests are exempt from such taxation.

Further answering, respondents say that it may be true that complainant university derives a large revenue through the rents received from the lessees, but respondents deny that a tax against the lessees is a tax or taxation against the complainant university; and they also deny that the tax proposed to be assessed upon the interests of the lessees in said property would decrease the amount of rents received by complainant university from said lessees. An examination of said leases will show. and respondents so aver the fact to be, that the amounts of rents to be paid by the lessees are fixed in the contracts and cannot be lessened by *by* the payment of taxes by the les-ees. In fact said rentals are not fixed in respect of the value of the improvements put upon the property, but are in the nature of a mere ground rental.

Respondents also show and deny that the fact that this property was supposed to be exempt from State and county taxes was taken
34 into consideration in fixing the amount of rent to be paid to complainant university; on the contrary, the lease contracts clearly show that the payment of taxes was contemplated at the time by both parties to the contract and complainant university compelled the lessees to agree to bind themselves to pay all taxes and assessments against the property.

Further answering, respondents again deny that the act of the General Assembly of 1903, as attempted to be enforced in this case,

in any manner impairs the contract between the complainant university and the State of Tennessee.

And respondents further show and aver that even if section 32 of said act could be construed, or shall be construed, so as to place a lien for taxes upon an *in* interest in lands which is protected by a contract exemption, then it would only follow that said section would to that extent be void, but respondents aver that said section is not susceptible of such construction, and even if said section should be void, nevertheless the interest of the lessees in said property is lawfully subject to taxation.

9. Respondents further aver that under the leases executed by complainant university, the several lessees become the absolute owners of the improvements erected, subject to the restrictions contained in said leases. They aver that complainant university and its officers have always recognized that said improvements belong to the said lessees.

Respondents further show that said lessees with the knowledge and consent of complainant university and its proper officers, procured insurance upon the buildings erected by them in their own names and as their property and in cases of fire collect from the insurance companies the amount of the insurance policies claiming the same as their own, without dispute or hindrance from complainant university.

Respondents further show that the owners of said lease-hold interests treat the same, that is, the buildings and improvements erected thereunder, as their own property, and said interests in said property, created by said leases, are bought and sold and mortgaged and devised by will, and treated as other property, with the full knowledge and consent and often times active agency of complainant university.

Respondents further show that a number of leases are owned and held by one lessee, who rents out the improvements and buildings to merchants and residents, holding the same as an investment. A large number of houses are thus held and rented out by non-residents, who have thus invested their money in this property for profit and because they can derive a greater income from the
35 money thus invested than they can otherwise procure.

Respondents further show that there is maintained in the town of Sewanee a public school for the benefit of the town and district which is supported by the taxpayers, there being apportioned from the general school fund of the county *of* about $2000 annually for the support and maintenance of this school. There is also apportioned for the benefit of the district $300 annually from the public road fund of the county. a large part of which is expended on the domain of the University of the South and the citizens of the town of Sewanee, the lessees above referred to, receive the benefits of taxes paid by other citizens of the county without contributing anything by way of taxes to the support and maintenance of the roads largely used by them.

10. Respondents further answering said bill, and particularly the twentieth paragraph thereof, which was allowed as an amend-

ment some time after the original bill was filed, show unto your Honors that they are not advised as to the number of acres of land which complainant university owns in the county of Franklin and they have no personal information in regard to the boundaries of what is claimed by complainant university as its one-thousand acre reservation, which, as your Honors can see from section 10 of said university's charter, is not definitely described, and whether the officials of complainant university ever located the same definitely or allowed said reservation to float around generally over their entire domain, respondents are not advised.

Further your Honors will see by examining paragraph 6 of said bill, that it there averred that all the lessees of complainant university occupy lots which are a part of said one-thousand-acre reservation, and proceeds to set out the names of a large number of lessees, but in said paragraph 20 it is admitted that a considerable number of said lessees live outside of said one-thousand-acre tract or reservation, but whether any other lessees than those named in said paragraph 20 occupy premises upon that part of the domain which complainant university concedes may be taxed respondents are not advised and call upon complainant for strict proof in regard to these matters.

And further answering said bill, and particularly said paragraph 20, respondents show that the provision contained in the leases of complainant university in respect of taxes and assessments is continued and used in the leases now in force long after the complainant claims to have endeavored to establish a sort of municipal government upon this property and respondents deny that said
36 provision refers alone to such taxes as were intended to be levied by said municipal government, but they aver that the taxes and assessments referred to in said leases were intended to cover, and do cover, all taxes which may be levied by authority of law.

11. Further answering said bill, respondents deny that complainant university has no adequate remedy under the laws of Tennessee. Respondents aver that *that* complainant university needs no remedy, because no possible injury can result to it under proceedins sought to be enjoined by the bill in this cause. Respondents aver that *that* it was not intended by said proceedings to reach or affect any interest of complainant university in its exempt property.

Further respondents show and aver that the statutes of Tennessee provide a plain, complete and adequate remedy for complainant university, even if its interests were in any manner affected by the proceedings instituted by respondent Jetton before respondent Osborne as trustee of Franklin County.

Respondents deny that the judgment of respondent trustee Osborne sitting as a special tribunal as aforesaid, against Mrs. Hoeffer assessing her interest in her said leasehold for taxes is a lien upon the interest of or title of complainant university in said property and they deny that under the proceedings against the other lessees, any judgment could be rendered which would become a lien or cloud upon the title of complainant university in said property.

And here and again your respondents point out to your Honors that the lessees of complainant university are not parties to this suit and under the law cannot be parties to this suit—that the proceedings instituted by respondents were against said lessees alone, who will not be affected by any judgment or decree rendered in this cause—and that complainant university is being permitted to prosecute this suit and restrain respondents from proceedings to levy and assess taxes which can in no way affect the interest of complainant, and that such restraint and injunction is allowed without bond and without any sort of protection to the State of Tennessee and county of Franklin. And now having fully answered, respondents pray to be hence dismissed with their reasonable costs in this behalf expended.

COUNTY OF FRANKLIN.
D. S. OSBORNE, *Trustee.*
JAMES R. JETTON,
State Revenue Agent.

LYNCH & PHILLIPS,
THOS. B. LYTLE,
Solicitors.
CHARLES T. CATES,
Attorney General.

Endorsed: Filed February 11th, 1907. H. M. Doak, Clerk.

37 The following replication was filed, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON ET AL.

This repliant, the University of the South, reserving unto itself all and every manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of defendants, for replication thereto says:

That it does and ever will maintain and prove its said petition to be true, certain and sufficient in law to be answered in and by the said defendants J. R. Jetton and that his answer is very evasive, uncertain and insufficient in law to be replied to by this repliant, that this without any other matter or thing in said answer contained material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true. All of which matters and things this repliant is ready to aver and maintain and prove as this Honorable Court shall direct as in and by its bill it has already prayed.

JAMES J. LYNCH,
JOHN J. VERTREES,
Counsel.

Endorsed: Filed April 16, 1907. H. M. Doak, Clerk.

Upon the hearing of the demurrer an opinion was handed down and filed, as follows, to-wit:

38 In the Circuit Court of the United States for the Middle District of Tennessee.

No. 3481. Equity.

UNIVERSITY OF THE SOUTH ET AL.
vs.
JAMES R. JETTON, State Revenue Agent, *et al.*

In the study of this case it is found that the industry of eminent counsel on both sides has accumulated such a number of cases in the briefs as to make it impracticable to re-state or to re-discuss these cases in this memorandum opinion without extending its limits beyond all reasonable length.

In this situation, I deem it sufficient to assure eminent counsel that I have examined the cases and have undertaken to give them the consideration which they deserve, in view of their bearing on the issues presented in this case for determination. Under such circumstances I shall content myself with a simple reference to some of the cases which seem to me to support and to require the ruling which is about to be made on the issues here to be disposed of. It is probably best in the outset to remark that, so far as the lessee complainants are concerned, there is no statute of the State confessedly which has undertaken to exempt them from taxation, and their contention consequently does not and cannot involve a federal question such as to give this court jurisdiction, and this view makes it immaterial to consider whether the case as to each of these complainants would show a jurisdictional amount sufficient to sustain jurisdiction, for I think it is certain, upon the authorities, that the amount connected with the complaint of each one of these lessees is a separate matter, and that their several complaints could not be aggregated, or put together, to make up jurisdictional amount.

However this may be, as just suggested, I do not now find it necessary to decide. There is, as to them, really no substantial federal question.

And the second ground of the demurrer is special and separate against the complainants other than the University of the South, and is accordingly sustained, and all other grounds assigned in the demurrer, and the demurrer as a whole, so far as it applies to the University of the South, is overruled, for reasons which will sufficiently appear in the further statements of this memorandum opinion.

The first objection is that the bill presents no federal question, and that there is a want of federal jurisdiction, as distinguished from
39 State jurisdiction. However, upon a careful study of this question, I am unable to accept the views so cogently presented by the able counsel on behalf of the State's revenue-collecting and tax-assessing officers.

Reference may be made to the following cases:
Bank of Kentucky *v.* Stone, 88, F. R. 383;
Union & Planters' Bank *v.* City of Memphis, 111 F. R. 561;
Illinois Central Railroad Co. *v.* Adams, 180 U. S., 28;
City Ry. Co. *v.* Citizens' Railroad Co., 166 U. S., 557.

The case of Hamilton Gas Light Co. *v.* Hamilton City, 146 U. S., 258, is relied on by defendant's able counsel as supporting the proposition that there is a want of federal jurisdiction. It must be remembered, however, that there was in that case a contention that there was no statute of the State of Ohio which furnished authority, or color, for the city in the enactment of the ordinance in question, and it was said in reference to this that a municipal ordinance not passed under supposed legislative authority could not be regarded as a law of the state, within the meaning of the constitutional provision against impairing the obligation of contracts.

The court, after recognizing the soundness of this contention as a general proposition of law, proceeded to say distinctly that federal jurisdiction was sustained because it appeared that the defendant grounded its right to enact the ordinance in question upon a certain section of the municipal code of Ohio, as found in the Revised Statutes of Ohio, and it was held that the circumstance that the ordinance was passed under the authority or color of that section raised a federal question, and gave to the federal courts jurisdiction. This case was distinguished in this respect in the case of American Waterworks & Guarantee Co. *v.* Home Water Co., 115 F. R., 171.

Now, in the case at bar, the entire tax proceeding on its face, and in every step of the procedure from first to last, is obviously and expressly based upon the Revenue Act of 1903, passed by the General Assembly of the State of Tennessee, and, I think, under the authorities the existence of a federal question here cannot be successfully denied, and that the court possesses jurisdiction as between the University of the South and the defendants; and I conclude the position which is suggested rather than argued, that this is a suit against the State is not maintainable: and just in this connection I may refer to the contention that while the tax proceeding is expressly and avowedly under the Act of 1903 in its different provisions as authority for the tax, still the proceeding and judgment would be good if such a proceeding can be maintained, and such a tax laid or assessed under any other provision of law, and under any other classification of the property of the lessees as personalty or otherwise.

I am sure that defendants' very able and thoughtful counsel will agree that it would be extremely embarrassing for the court to go entirely outside of the case, as made in the tax proceeding clearly and expressly, and also in the pleadings, and inquire whether or not the tax proceeding was illegal and void, and whether or not if found to be so it could be sustained upon other grounds and other provisions of law different from those under which the proceeding was clearly conducted, and which proceeding is sought to be enjoined by the pleadings in this case, which pleadings present exactly the same is-

sues and questions as those which arose on the tax proceeding on its face. I do not think this can be done.

Ogden City *v.* Armstrong, 168 U. S., 224.

Such an inquiry as that of going outside of anything that appears on the face of the tax proceeding, or in the pleadings which present the case for the court's ruling, would manifestly be to make the case turn on issues partly of law and partly of fact entirely *dehors* the proceeding. It would be to consider issues that do not arise on the face of the Act of the Assembly; nor again in the tax proceeding expressly under color of the authority of that Act; nor again in the pleadings which make the case for decision.

In this same connection reference may be made to the case of University *v.* Skidmore, 3 Pickle, 155, the decision in which eminent counsel insist should be read into the revenue act, and so considered as if it appeared in the very face of the act, and in consequence of which it is said the constitutional invalidity of the act would appear. This, however, would be again to go outside of the record, and if the law declared in the Skidmore case were read into this act the situation would still be that the act would be contradictory on its face, in that it expressly and clearly declares what property shall be taxed and what shall be exempt, and then declares in positive terms that there shall be no other exemption.

Furthermore, whether or not the Skidmore case could be relied on would involve an inquiry into the nature of the lease contracts, and a construction of those contracts, and whether the lease contracts relate to parcels of property within the 1,000-acre exemption; or again possibly whether or not the interest of the lessees could, as a matter of law, be separated from the general fee and general ownership so as to become the subject of taxation in the hands of the lessee. These questions would give rise in any case, and in as many cases as may occur in the future, to law suits of serious difficulty, and unless the University of the South can protect itself by injunction, as it is now seeking to do, it seems evident enough that it will be subjected to a law suit in respect of each and every lease contract which it makes. If it should stand by until the tax proceeding is carried to completion, the tax record then on its face, and on the face of all that might be considered, would confer upon the purchaser at the tax sale a title, to defeat which it would be necessary for the University of the South to bring suit, or to be sued, and then set up its exemption from taxation, as broadly declared in the Skidmore case. The tax proceeding would obviously prevent handling the property on the market so long as it existed, and would injure its market value and its rental value, and its validity would depend on matters entirely outside of the tax record as made up, and on which the tax title would rest. If we may assume that the University of the South has as many as fifty lessees, it would involve it in as many as fifty separate lawsuits to protect its property and to maintain practically its value to it for renting, or for other uses. It would involve it in lawsuits with tax purchasers at the tax sales, and would, of course, unless it should protect its tenants and lessees,

cause a rental loss on account of the fact that such lessees and tenants would refuse to be involved in litigation in connection with the title, the ownership of which might be regarded as doubtful.

In view of these and other points which might be suggested, I conclude, without difficulty or misgiving, that the University of the South has a constitutional right to maintain a bill to protect its exemption contract against impairment. Under the common law, and under the common law as expounded in this state by repeated decisions, the taxes assessed on real estate during the lease fall upon the landlord, in the absence of any express stipulation to the contrary, and it is an obligation resting on the landlord constantly to keep down and to pay such taxes and to protect the lessee in his possession against disturbance or interference by tax proceedings.

In view of the averments of the amended bill, which must be taken as true upon this application, and in hearing the demurrer, the University of the South is resting under this common law obligation towards its lessees to pay this tax, if it can be lawfully assessed,

42 and under such circumstances a tax against the lessees is for all substantial purposes, and in fairness, a tax on the rents and a debt against the landlord on account of property which the State has, by contract, exempted from taxation. It can make no difference in substance as to the form in which the tax is laid; it finally falls upon the landlord, under his obligation, to pay, or necessarily under a diminution of the rental value of the property, and the fact that the result in a given case may come about indirectly instead of directly is not material. It is the substance and the necessary effect of what is done, and not the form of it, that must be regarded in administering substantial justice. It is obvious enough that a tax upon the rent for the use of land is a tax on the land itself.

Pollock *v.* Farmer's Loan & Trust Co., 157 U. S., 429;
Mosely *v.* State, 115 Tenn., 52.

And, indeed, it is obviously plain that a tax laid or assessed against a tenant, or lessee, is a tax upon the land and against the landlord, in the absence of express stipulations which change the result.

If the State and County might assess a tax against these buildings and improvements as personalty under a classification and under tax proceedings appropriate to that view of the situation, it seems clear enough that this has not been done, or attempted to be done by anything in the legislation of the State, and certainly not by anything in this tax proceeding which can be regarded as at all apt or appropriate to such a classification of property and such a procedure. It would be necessary in such legislation as that, and in such procedure under it as might be adopted, to so express and so restrict the legislation as to show a clear intention to classify and tax the improvements of the lessees only, and to make it a charge upon such improvements only, and not on the fee general.

This is all that is positively necessary to decide in relation to this point made in the discussion, but I do not think that the State,

under the broad doctrine of the Skidmore case, is at liberty to adopt this method of laying a tax on the improvements, or supposed interests of the lessees.

Under the terms of the lease contract, I conclude that the improvements cannot be separated, or segregated from the land, and that the lessees possess no interest which can be separated from the general fee.

The lessees, under a proper construction of the contract, are entitled at the expiration of the lease either to a renewal of the lease,
in accordance with the terms of the lease, or to an appraise-
43 ment of the value of the improvements, at which the University of the South is required to pay for the improvements if the renewal is not made.

As matter of law the lessee could not and cannot, over the objection of the University of the South, at any time remove these improvements and if the University of the South should refuse to renew the lease, and should then, in bad faith, or otherwise, without good cause, refuse an appraisement, the remedy of the lessee would be to sue the University of the South to recover damages for the value of the improvements, which should, under the contract, have been fixed by appraisement. This right would accrue only when the University of the South would defeat the right of appraisement, and substantially deny that remedy to the lessee. Both parties would in such an event as that be relegated to their common law rights and a right to remove permanent buildings, which is not one that belongs to the lessee at common law.

I conclude that the case of Luttrell *v.* Knox County, 5 Pickle, 257, is essentially and substantially distinguishable from the case at bar, and that its bearing on the issues here determined is not sufficiently material to affect the result.

As I have already stated, I regard the doctrine of the Skidmore case as broadly declaring the exemption of the University of the South from any form of burden, or taxation, direct or indirect, in respect of the 1,000-acre exemption. I think that decision is obviously just and fair in principle. In regard to an educational institution of so much value to the State and to the South as the University, the State's exemption should be construed with entire fairness and justice, not to say liberality, and it is not like an exemption in favor of a private corporation, organized for the promotion of strictly private interests, and for money gain. This is true in principle, regardless of what any case may say upon the subject.

I conclude upon the case as a whole, as already intimated, that the University of the South has the right to maintain this bill to protect its exemption contract from unconstitutional impairment by the State.

I conclude, as already stated, that this not a suit against the State, and that the injunction is not one to enjoin a court of the State, which is another point made in the defense.

I think the trustee in the proceedings had before him was engaged in the mere ministerial execution of the provisions of the statute of State, and, of course, incidentally he determines whether

the statute of the State is applicable, but this does not constitute his functions judicial, nor his position in the matter that of
44 a court, in the sense of section 720 of the Revised Statutes of the United States, and this court must, of course determine for itself what is a state court within the meaning of that section of the Revised Statutes.

Western Union Telegraph Co. *v.* Wyatt, 98 F. R., 335.

His position is substantially that of a ministerial officer, or at most that of an executive or administrative board charged with the execution of a statute. The fact that he might incidentally exercise quasi-judicial power would not change the result.

The proposition that the court possesses jurisdiction on the equity side to prevent a multiplicity of suits and to prevent a cloud being cast upon the title of the University of the South is supported by Ogden city *v.* Armstrong, *supra*, and Wilson *v.* Lambert, 168 U. S., 611.

I return for a moment to the contention on the part of the defendants, that the Revenue Act of 1903, should be read and construed in the light of the Skidmore case, just as much as if the doctrine of the Skidmore case were declared in the Act, and that the act as thus construed would not and could not apply to the University.

It should be further remarked in regard to this contention, so earnestly pressed on behalf of the defendants, that the revenue officers are presumed to know the law and the doctrine of the Skidmore case.

Furthermore, the situation must be looked at, not in a strained or theoretical method, but under a practical and substantial view, and it is hardly to be doubted that these revenue officers, in a matter of such importance and delicacy, are acting under the advice of eminent counsel, and that they are construing this act as authorizing the tax which is being assessed aginst this property, notwithstanding the doctrine of Skidmore case. If the Skidmore case were read into the act, as counsel contend it should be and the State through either its judicial or executive departments should still construe and enforce the act as authorizing the tax proceeding here in question, this would be unconstitutional and furnish foundation for the relief sought, notwithstanding the courts should conclude that the construction being put upon the statute and the method of its execution were not in accordance with a proper interpretation of the State statute.

In the case of Chicago, Burlington etc., R'd *v.* Chicago, 166 U. S., 226, in reference to a similar view that the constitution of Illinois on its face did not violate the Fourteenth Amendment, the Supreme Court of the United States, speaking by Mr. Justice Harlan, said:

"It is not contended, as it could not be, that the constitution
45 " of Illinois deprives the railroad company of any right se-
" cured by the Fourteenth Amendment. For the state consti-
" tution not only declares that no person shall be deprived of his
" property without due process of law, but that private property shall
" not be taken or damaged for public use without just compensation.
" But it must be observed that the prohibitions of the amendment
" refer to all the instrumentalities of the state, to its legislative,

"executive and judicial authorities, and, therefore, whoever by virtue "of public position under a state government deprives another of "any right protected by that amendment against deprivation by "the state, 'violates the constitutional inhibition; and as he acts in "the name and for the state, and is clothed with the state's power, "his act is that of the State.' This must be so, or, as we have often "said, the constitutional prohibition has no meaning, and 'the State "has clothed one of its agents with power to annul or evade it.' *Ex "parte* Virginia, 100 U. S., 339, 346, 347; Neal *v.* Delaware, 103 "U. S., 370; Vick *v.* Hopkins, 118 U. S., 356; Gibson *v.* Mississippi, "162 U. S., 565. These principles were enforced in the recent case "of Scott *v.* McNeal, 154 U. S., 34, in which it was held that the "prohibitions of the Fourteenth Amendment extended to 'all acts of "the State, whether through its legislative, its executive or its judicial "authorities;' and, consequently, it was held that a judgment of the "highest court of a state, by which a purchaser at an administration "sale, under and order of a probate court, of land belonging to a "living person who had not been notified of the proceedings, de-"prived him of his property without due process of law contrary to "the Fourteenth Amendment."

This view may be further illustrated by reference to *In Re* Thomas, 31 C. C. A., 80. In that case the governor of the Soldier's Home at Dayton, Ohio, had been arrested and convicted before a magistrate in the State of Ohio and sentenced to pay a fine and to be imprisoned until such fine was paid. The prosecution was instituted and complaint and affidavit made by the Dairy Commissioner of Ohio under a statute regulating the use of oleomargerine.

The governor of the Soldier's Home, on writ of *habeas corpus*, was discharged by Judge Taft, and the order discharging the defendant from custody was affirmed by the Circuit Court of Appeals in a court opinion found at page 87.

The Circuit Court of Appeals gave the opinion that upon a proper construction of the statute of Ohio it did not and could not apply to the use of oleomargerine at the Soldier's Home.

The Circuit Court of Appeals in reference to this point said:

"With respect to the question of law involved, we concur in the "reasoning upon which Judge Taft's opinion proceeds (and which "we are content to adopt as our own), and in the conclusion which "he reached, save that we prefer to rest our approval of the order "made by the court below upon the ground that, inasmuch as the "legislature of Ohio had no power to regulate the conduct of this "administrative agency of the national government by such a statute "as is here in question, it ought to be presumed that the legislature "did not intend it to have such an application, and that the statute "should be construed accordingly."

The case was carried on appeal to the Supreme Court of the United States and the judgment below affirmed.

Ohio *v.* Thomas, 173 U. S., 276.

The Supreme Court of the United States in disposing of the case, and discussing the issues, called attention to the fact that the Dairy

Commissioner and the Justice of the Peace of Ohio were
46 actually construing the law and enforcing it, or attempting to enforce it, as being applicable to the Soldier's Home, and that court wholly ignored the view that upon a proper construction of the statute it did not so apply. As the state was, through its judicial department and its executive officers actually enforcing the statute as applicable, that court broadly declared the statute unconstitutional and pretermitted any reference whatever to the view that the statute did not apply to the Soldier's Home, if properly and fairly construed.

And so here, if in the light of the Skidmore case the revenue act of 1903, could not and should not be construed as applying to any interest or right of the University of the South, or as affecting its exemption, still the fact practically is that the State, through its revenue officers, is actually enforcing and construing the statute in such a way as to make it applicable to the 1,000-acre exemption on the lands of — University, and in such a way that it will or may affect the title and interest of that University and cast upon it a cloud which will require litigation for its removal. This discussion, however, must not be prolonged further.

The injunction applied for will, accordingly be allowed in favor of the University of the South alone against any further proceedings by the defendants against any and every lessee and tenant of the University of the South occupying parcels or parts o- the 1,000 acres belonging to the University of the South.

The order can be drawn and made to run in apt and appropriate language and form and is allowed accordingly.

The complainant lessees will, of course, pay the cost of the cause, so far as that is incident to their having been made parties, as the result is, as to them, final.

Of course it results from these views that the court concludes that the Revenue Act of 1903, so far as the University of the South is concerned, is in violation of both the federal and state constitutions.

CLARK, *Judge.*

Endorsed: Filed November 1st, 1906, H. M. Doak, Clerk.

47 The following decree was made and entered of record upon the hearing on application of the complainant for a temporary injunction, viz:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

This day this cause came on to be heard on motion of complainants for a preliminary injunction, in accordance with the prayer of the bill in the above-entitled cause. And said cause having been heard upon the bill and amendment thereto and argument of counsel, both for complainants and defendants, the court was of opinion

that the complainant University of the South, being the owner of one thousand (1000) acres of land described in the bill, and the said 1000 acres being exempt from taxation under the charter granted said University by the State of Tennessee and that the State of Tennessee, through its officers, was attempting, by virtue of the revenue act passed by the General Assembly of the State of Tennessee, in 1903, to assess and back-assess said property for taxation against the lessees of said University of the South, and the court being of opinion that this was an impairment of the rights of the University under its charter aforesaid, the said University was, therefore, entitled to the injunction prayed for.

It is, therefore, ordered, adjudged and decreed by the court that the temporary injunction prayed for in complainant's bill be, and the same is, hereby granted upon the prayer of the said University of the South.

It is, therefore, ordered, adjudged and decreed by the court, that the defendants hereto, J. R. Jetton, State Revenue Agent, D. S. Osborne, Trustee for Franklin County, and the County of Franklin, their agents, servants, and attorneys and each of them, are hereby specially enjoined from proceeding with the assessment complained of in the bill in this cause and from in any manner attempting to assess, or back-assess, or collect taxes from any of the lessees of the University of the South, or any part of, or interest in, the one thousand acres of land described in complainant's bill, or the improvements thereon; or from in any way attempting to carry out the provisions of the general revenue law of the State of Tennessee, passed by the General Assembly of the State in 1903, complained of in complainant's bill, with reference to the assessment or collection of taxes on said property and from in any manner attempting to assess or collect taxes on this property pending this litigation.

And this cause coming on further to be heard upon the demurrers of defendants to complainant's bill, and *aft defendants to*
48 *complainant's bill, and* after hearing the argument of counsel for both complainants and demurrants, the court was of opinion that the lessees of the University of the South had no right to maintain this action and that the bill was improperly filed as to them and the bill was, therefore, dismissed as to them, to which action of the court said complainant lessees excepted.

The court was of opinion that the bill was properly filed on behalf of the University of the South and the demurrers as to the said complainant were overruled and disallowed, to which action of the court the defendants excepted.

Enter this January 18, 1907.

CLARK, *J.*

Entered "FF," page 163.

49 The following "Objections" of the defendants to the draft of decree filed by complainant, were filed, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

Objections to draft of decree (No. 1) submitted by counsel for complainants and showing reasons why decree (No. 2) prepared by counsel for defendants should be entered.

Before setting out in detail the objections of defendants to the decree prepared by counsel for complainants, we deem it proper to call the attention of the court to the following matters:

The motion for a temporary injunction and the demurrer were heard on or about Oct-ber 11th and about November the 1st, 1906, the opinion of the court was furnished to counsel for both parties, but before an order had been drawn by counsel for complainants, pursuant to the court's opinion, counsel for defendants notified Messrs. Spears & Lynch, of counsel for complainants, that, on November 19th, they would apply to Judge Clark at Knoxville for a modification of that part of his opinion relating to the character and extent of the temporary injunction allowed, so that the leasehold interests or property rights of the lessees therein might be assessed, but the collection of taxes thereon enjoined until the final hearing. On November 19th, counsel for complainants not appearing, the Attorney General, representing the State, presented the matter to Judge Clark in an informal way and he stated, tentatively, that he did not see any objection to such course and thought that such order would protect the rights of all parties. Thereupon, Mr. Cates, on the same day, sent a letter to Messrs. Spears & Lynch, a copy of which is herewith filed as exhibit "A." Mr. Cates was called away from his office in Knoxville and was absent perhaps a week or ten days, and upon his return, found upon his table a letter from Messrs. Spears & Lynch, addressed to Judge Clark, which is herewith filed as exhibit "B," and which sets out their objection to the modification sought by defendants, but was not accompanied with any proposed draft of an order or decree in relation to the matters in controversy.

On December 26th, counsel for the State received from counsel for defendants Franklin County and Osborne, Trustee, a draft or a decree or order which had been submitted to them by counsel for complainants, and for convenience this proposed decree is marked No. 1. The material difference between counsel for complainants and defendants in relation to the *to the* form of the order is
50 as to the extent or character of the temporary injunction, complainants insisting that the proceedings instituted by the defendants before the *the* trustee of Franklin County, sitting as a special tribunal for the re-assessment or back-assessment of taxes, should be enjoined; and defendants insisting that said proceedings should be allowed to go on, so that an assessment might be made, and that complainants' rights would be fully protected by an injunction pending the suit, against any attempt to collect or enforce such taxes as might be assessed.

Defendants specially object to the form of decree submitted by complainants because:

1. Said decree in terms is a holding by the court that the proceedings instituted by defendants is an impairment of the rights of complainant University under its charter and is, in effect, a final decree upon this question.

2. Said decree contains an order for a sweeping temporary injunction, without requiring injunction bond to be executed by complainants.

3. Complainants are not entitled to an order restraining defendants from assessing the lease-hold interests or property rights of the lessees of complainant University under their several leases, referred to in the original bill, and every interest and equity of the complainant University of the South would be fully protected by permitting such assessment and enjoining the collection, or any attempt to collect, the taxes so assessed.

The first two propositions, we submit, are too clear for argument.

In support of the third, we submit:

(1). It is well settled that one who comes into equity for relief against proceedings at law and who seeks to enjoin such proceedings, will be granted relief only upon condition of his first confessing a judgment at law. The principle upon which this rule is based is said to be that, whenever a person resorts to equity for substantive relief against a claim asserted at law, he must submit himself entirely and without reserve to the jurisdiction of the chancellor. We deem it unnecessary to cite authority in support of this well-settled rule of equity practice, or well recognized principle governing the issuance of injunctions against proceedings at law. But, it is not improper to point out that this rule was recognized by this court, sitting at Nashville, as early as 1812, in *in* the case of Matthews *vs.* Douglas, Cook's Reports, 136.

The proceedings instituted by defendants and which complainant University seeks to enjoin were instituted by due notice before
51 the special tribunal created by the statutes of Tennessee and clothed with exclusive jurisdiction to hear and determine actions or proceedings begun by the State or County for the purpose of having property subject to taxation re-assessed or back-assessed. It must be borne in mind that it is the interest- of *y*he lessees of complainant University which are sought to be assessed, that upon the face of the proceedings sougt*h* to be enjoined there is no effort made to assess or value for taxation any property interests of complainant University. It is no sufficient answer that defendants may have a multitude of suits with third persons; complainant University is not a party to those proceedings. And even, if, conceding for the purpose of argument only, the assessment, when made against the property of the lessees, might be a lien upon complainant University's property, which is exempt from taxation, nevertheless, if this court has jurisdiction of the question, its injunction against the collection of any assessment when made will afford complainant University full and comp*l*ete relief, and this court has full power to cancel and remove any possible cloud upon complainant University's property.

On the other hand, unless defendants are permitted to make an assessment, the statute of limintations of three years will run so as to protect the lessees from any taxes or back-assessment of taxes for more than three years prior to the final dissolution of the injunction in this case.

It is no answer that the statute of limitations will not run because of the injunction in this cause, for the reason that the lessees are not parties to this proceeding and the injunction ordered cannot be availed of by the defendants against the lessees or set up in answer to their interposition of the statute of limitations of three years. Said statute will run in their favor while this suit is pending.

We respectfully submit that the order for temporary injunction as set out in the draft of the decree prepared by counsel for the defendants will meet every equity of the case and protect any right which complainant University may have, preserving, at the same time, the rights of defendants. We, therefore, ask that it be granted.

Respectfully Submitted.

LYNCH & PHILLIPS.
THOS. B. LYTLE.
CHARLES T. CATES, Jr.,
Attorney General.

The following is exhibit "A" to the foregoing, viz:

NOVEMBER 19TH, 1906.

Messrs. Spears & Lynch, Attorneys at Law, Chattanooga, Tenn.

GENTLEMEN: On November 17th, I wrote you to the effect that on to-day at this place *at this place*, I would apply to Judge Clark
52 for a modification of the instructions contained in his recent opinion in the Sewance tax matter, so that the property involved might be assessed by the proper officials, but enjoining a collection of the taxes until a final hearing. You did not appear to-day and I presented the matter to Judge Clark in an informal way, and he tentatively stated that he did not see any objection to such course, but that he thought that such an order would effectually protect the rights of all parties.

Please prepare your order in accordance with this modification and submit it to me at your earliest convenience. Doubtless you have been quite busy and have thought that this matter would keep, but you will remember that you have a restraining order against us and I hope you will prepare the order for temporary injunction, modified as above stated, as soon as possible, so that we may proceed to make the assessment and file an answer and this place the cause at issue without further delay.

Very Truly Yours.

The following is exhibit "B" to the foregoing, viz:

NOVEMBER 22D, 1906.

Judge C. D. Clark, Knoxville, Tenn.

DEAR JUDGE: General Cates informs me that he has suggested to you the propriety of modifying the injunction in the University tax

case, so as to permit the assessment, pending the litigation, and let the injunction apply to the collection of these taxes. We would like to be heard before you make this modification.

If the assessments are made and the litigation in your court is finally determined adversely to the University of the South for the want of jurisdiction in the federal court and this seems to be the main defence, then the University of the South would desire to contest the question involved in this law suit in the state courts; and of course it could not enjoin collection of the state taxes after the assessment was made, so that it would have to pay the money into court under protest, in order to maintain an action in the state court. We have no doubt as to the court's jurisdiction, still we do not want to surrender any rights in the matter.

The main objection, however, we have to the matter is this: The principle ground for equity jurisdiction in this case is to prevent a multiplicity of suits. Now, if this injunction is modified and the assessments are permitted to be made, we will have to try probably two hundred cases on the question of valuation before the
53 trustee. As you remember, it is a disputed question whether the University owns the buildings or the lessees own the buildings. Now before there can be an assessment fixing the valuation of the lessees' interest, the trustee will necessarily have to decide this question as to who owns the buildings, and the valuation thereof, and we will have to go through all this fight before the trustee. Now, when the case comes on for trial, we apprehend the representatives of the State will say that the question of the multiplicity of suits would no longer apply, because all these matters had been determined by the trustee, by the permission of this court.

And, besides, when these assessments are made, they will cast a cloud upon our title, the very thing the court has enjoined, and we are seeking to prevent.

We merely offer these suggestions and we cannot — how the State will be injured; because, necessarily, the statute of limitations will not run, pending the proceedings; and we have stated to the attorney general that we will agree in writing for all the lessees that the statute will not run pending this litigation.

Yours Sincerely, SPEARS & LYNCH.

The foregoing "Objections" and exhibits "A" and "B" endorsed: Filed December 31, 1906, H. M. Doak, Clerk.

54 The following opinion was handed down and filed, viz:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

The pendency of the injunction will prevent the operation of any statute of limitations in favor of the University and its lessees. Fur-

thermore, the solicitors of the lessees agree to make a stipulation to this effect. It might be done by a consent order in the cause. This is all the defendants can ask. The tax, if assessed, is a lien on the property, and continues so under the laws of the State, from the very date when the tax accrues. This is ample security, and it is not customary to exact a bond in such cases. In very many cases the practice would, in effect, deny the remedy altogether and is unnecessarily burdensome, not to say somewhat oppressive.

I do not make any order transferring the cause, because not furnished with a written stipulation signed by all the solicitors, and the Attorney General for the State opposes, as I understand his letter. Furthermore, I prefer not to establish a precedent of taking a case from the court and the clerk in and to whom the case belongs, in the absence of special and urgent reasons.

The case gives rise merely to a question of law and there is no large volume of evidence to be taken. Indeed, it seems to me the case is about ready for a final decree. It can also be fully revi-wed and decided for all purposes, as I think, on appeal from the order allowing this injunction.

I do not regard the discretionary rule of requiring confession of judgment as applicable to a case like this.

The other points made against the decree I do not thing are good.

CLARK, *J.*

Endorsed: Filed Jan. 16, 1907, H. M. Doak, Clerk.

55 The following transcript of the record in *in* University of the South *vs.* A. J. Skidmore, Trustee, from the Chancery Court of Franklin County, was filed, viz:

THE UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee,
and
FRANKLIN COUNTY, Tennessee,
vs.
UNIVERSITY OF THE SOUTH.

Transcript of the record from the Chancery Court at Winchester, Franklin County, Tennessee, in the cause of the University of the South against A. J. Skidmore, Trustee, and Franklin County against the University of the South.

Injunction Bond.

Know all men by these presents: That we, University of the South and Marks and Gregory, are held and firmly bound unto A. J. Skidmore, Trustee in the penal sum of five hundred dollars and — cents, for which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 3d day of August, 1887.

The condition of the above obligation is such, that, whereas, University of the South hath this day of the date hereof prayed for and obtained from the court of Chancery, holden at Winchester, in the State of Tennessee, a writ of injunction, returnable to the Chancery Court, holden at Winchester, on the 4th Monday in January next.

Now if the said University of the South shall prosecute the said injunction with effect, or in case it fails therein, shall well and truly pay and satisfy the said A. J. Skidmore, Trustee, or either of them, all such costs and damages as shall be awared or recovered against the said University of the South in any suit or suits which may be hereafter brough- for wrongfully suing out of said injunction and shall moreover abide by and perform *and* such orders and decrees as the court may make in this cause and pay such costs and damages as the court may order, then the above obligation to be void; otherwise to be and remain in full force and effect.

UNIVERSITY OF THE SOUTH.
MARKS & GREGORY.

We hereby bind ourselves for the prosecution of the above suit and payment of all such costs as may be awarded on the final hearing thereof.

MARKS & GREGORY.

56 *Original Injunction Bill.*

To the Honorable Walter S. Bearden, Chancellor, presiding at Winchester, Tennessee:

Your orator, the University of the South, shows that it was incorporated by an Act of the General Assembly on the Sixth day of January, 1858, in the manner and form following:

CHAPTER 29.

An Act to Establish the "University of the South."

Whereas sundry citizens of the states of Tennessee, Arkansas, Georgia, North Carolina, South Carolina, Alabama, Louisiana, Texas, Mississippi, and Florida, contemplate establishing a University, to be located in the State of Tennessee, at a place which shall be conveniently accessable to the citizens of said states, which University is to be under the control and government of the Protestant Episcopal Church, subject to such rules, regulations set forth; and *and* whereas, the security of society, the supremacy of the law, the preservation of liberty, regulated by law, the perpetuity of our institutions and of the Union—all are, at least, dependent upon the prevalence of intelligence of the people and sound moral sense among them; and whereas, it is the interest of the state, and indeed of every state, to encourage the erection of seminaries of learning, therefore:

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That James H. Otey, David Pise, Francis B. Fogg, John

Armfield, Thomas Atkinson, M. Ashby Curtis, Thomas Ruffin, Thomas D. Warren, Thomas F. Davis, Alexander Gregg, J. S. Manning, Wm. Allison Pringle, W. H. Cobbs, Henry C. Lodge, S. T. Pollard, L. H. Anderson, Wm. M. Green, W. W. Lord, Geo. S. Sergen, Eugene Hinton, Leonidas Polk, W. T. Leawick, Geo. S. Gunion, Wm. M. Mercer, J. W. Dunn, E. B. Nichols, J. E. Nicholson, Francis H. Rutledge, G. E. Fairbanks, —— Whitfield, J. J. Scott, and such other person or persons as may hereafter be appointed trustees of said university, in pursuance of the constitution and by-laws thereof, be and they and their successors are hereby constituted a body corporate and politic, in fact and in name. by the name of the "University of the South" and by that name shall have perpetual succession and a common seal, and shall be capable in law of suing and being sued, and shall have power to purchase, receive by donations, or otherwise, and to possess, hold, alien and dispose of property of all kinds and descriptions, to be held in fee simple or otherwise, subject, nevertheless, to such restrictions and conditions as are contained in this charter.

57 Be it further enacted, That said trustees shall have power to asse-ble at such time and place as may be designated by the President of the Board, for the purpose of organizing said institution, and of forming a constitution for the government of said University.

A majority of said trustees shall constitute a quorum for such purpose.

Said trustees shall have power in and by their said constitution to designate how, by whom and in what way said University shall be governed; and said constitution when adopted, may be altered or amended in such manner as may be provided for in said constitution.

Said Board shall keep a minute of their proceedings.

SECTION 3. Be it further enacted, That said Board shall meet at least once a year at the University, where the buildings are erected, but they may be called together in extra session, in such manner as may be provided for in said constitution, or by the laws of said institution.

SECTION 4. Be it further enacted, That said trustees shall have power to appoint committees (all the members of which shall not be required to belong to the Board of Trustees) to perform duties which *which* may be delegated to them by said trustees.

SECTION 5. Be it further enacted, That all subscriptions, donations, devises, or bequests, made upon the faith of the terms, conditions, or stipulations set forth in the constitution of said University, shall be governed thereby, and the subsequent change or alteration of said condition, shall not have the effect to alter the terms, conditions, or stipulations of said subscriptions, donations, bequests, or devise.

SECTION 6. Be it further enacted, That said trustees shall appoint a president, and shall have power, from time to time, to make by-laws and ordinances for the government of said University, not inconsistent with the constitution thereof, and for the appointment of professors and for other officers; and for regulating the duties and

conduct of the officers, professors and students, fixing the salaries of officers, etc., etc.

Provided, the same shall not be inconsistent with the constitution and laws of this state and of the United States.

SECTION 7. Be it further enacted, That upon the death, resignation, or removal of any said trustees, the vacancy occasioned thereby shall be supplied in the mode provided by the constitution.

SECTION 8. Be it further enacted, That said University shall have full power to establish Literary and Scientific Departments, and those of Law, Theology, and Medical Science, and such other De-
58 partments as said University may see proper and to confer upon students, or any other person, the Degrees of Batchellor of Arts, Master of Arts, or any degree known and used in any college or University; and shall enjoy all other powers and immunities incident to corporations of this description.

SECTION 9. Be it further enacted, That said University shall be established in and located at Sewanee, on the Cumberland Mountain, in or near Franklin County, or at any other point that the Board of Trustees may hereafter designate, in the State of Tennessee; the site to be selected by said trustees, or by such person, or persons, as they may appoint, which site shall continue until changed by the trustees according to the provisions of the constitution.

SECTION 10. Be it further enacted, That said University may hold and possess as much land as may be necessary for the building and to such an extent as may be sufficient to protect said institution and the students thereof, from intrusion of evil-minded persons who may settle near said institution. Said land, however, not to exceed *two** thou-and acres, one thousand acres of which, including buildings and other effects and property of said corporation, shall be exempt from taxation, so long as said land belongs to said university. (**"Two"* in transcript, perhaps *"ten"*: Clerk.)

SECTION 11. Be it further enacted, That no misnomer or misdescription of said cor;oration in any deed, will, gift, grant, devise, or conveyance, shall abate or defeat the same, but that the same shall take effect in like manner as if said corporation were regularly named: provided it be sufficiently described to ascertain the intentions of the parties.

SECTION 12. Be it further enacted, That this Act be and the same is hereby declared to be a public Act.

SECTION 13. Be it further enacted, That this Act take effect from and after its passage.

DANIEL S. DONNELSON,
Speaker of the House of Representatives.
JOHN C. BURCH,
Speaker of the Senate.

Passed January 6, 1858.

And on the nineteenth day of January, 1858, said Act was amended as follows:

CHAPTER 36.

An Act to Amend An Act of January 16th, 1858, Chapter 29th, of the Private Laws, Entitled "An Act to Establish the University of the South."

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That Stephen Elliott, *Mm.* M. Hawks, Daniel
59 Griffin, and J. Hamilton Cowper, be and they are hereby appointed additional trustees to said University of the South.

SEC. 2. The said University of the South shall have power and authority to receive donations and grants of lands in addition to the number of acres specified in the 10th section of the charter:

Provided, That if said additional donations or grants are of lands in this state, that such lands be sold and disposed of by the University and converted into personal securities or State Bonds.

SEC. 3. The said University of the South shall have a right to establish such police and municipal regulations as may be necessary for the preservation of order and the enforcement of the By-laws *and* said University, the same to be consistent with the laws and constitution of the United States and this State.

That the foregoing shall be the amendment of the charter of said University.

SEC. 4. Be it further enacted, That this Act take effect from and after its passage.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Passed January 19, 1860.

At the time the *the* General Assembly of the State of Tennessee clothed your orator with the powers and esemptions set out in the said Act, its power to make such grant was not only perfect, but the grant was made in obedience to the express injunction of the constitution of 1834, then in force, and embraced in section 10 of Article 11, as follows:

"SEC. 10. Knowledge, learning, and virtue, being essential to the preservation of republican institutions and the diffusion of the opportunities and advantages of education throughout the different portions of the State being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science."

As shown by the terms of said grant, the enterprise contemplated was vast in design and involved the investment of a large capital to accomplish the purpose intended. It is seen from section 10 of the Act, that your orator is clothed with the power to take title to and hold 10,000 acres of land.

The object in view in clothing it with power to hold title to so large a dominion was to enable it to enforce such police regu-
60 lations in its neighborhood as were necessary to promote the good order and discipline of the University contemplated.

When the grant was made, it was supposed that said University would be established on the plateau of the Cumberland Mountains in Franklin County, Tennessee, and on the line of the railway from Cowan in Franklin County, to Tracy City in Grundy County and after said grant it was in fact there established. All the land in that section was then an uninhabited barren waste, totally unimproved, and practically without a money value and hence it required but a small outlay of capital to obtain title to the amount of lands your orator was entitled to hold.

Immediately after the grant of its corporate powers your orator was regularly organized and accepted said grant in regular form.

Upon the faith of said grant, it acquired the lands it was entitled to own and in 1860 began to erect the buildings necessary for University purposes.

The war of 1861 arrested the progress of the enterprise and while at that time a large capital had been contributed to build and endow the University, it was all lost by the war, and in 1865, but little was left save some lands. While before the war, the task was easy to command all the capital necessary to establish and endow said University, yet after its close what was before an easy task, became an almost impossible one.

Upon the faith of said grant, however, all that enterprise and devotion could do was done, and the result is the University of the South is now in the front rank of the universities of the Union.

Expensive buildings had been constructed and year by year as the means of your orator would allow said University has been enlarged and improveed.

Its several chairs are and have been filled with the ablest men in their several departments and while your orator has no endowment fund, yet by its methods and reputation, its annual attendance steadily augmented and is now between 3 and 4 hundred students drawn from every part of the South.

This result has been made possible by building a beautiful University town around the University buildings, which, by its freedom from sickness, its pleasant temperature, and the culture of its inhabitants, is known throughout the South as among the most attractive summer resorts. These advantages have drawn to it an active, thrifty business population; and by the rent of the dwelling and business houses of said town, your orator is now and has been
61 for several years derived a considerable revenue and every dollar of this revenue has been devoted to the exclusive use of said university and without this revenue it would be impossible to maintain said university.

It is seen by section 10 of said Act of incorporation, that 1000 acres of the lands of your orator, and the buildings thereon and other effects and property of your orator, are perpetually exempt from taxation and it is upon this 1000 acres exemption the university buildings and town of your orator are built.

Your orator has not parted with its title to any part of said lands

and is the exclusive owner of every part thereof and the buildings thereon.

When said university was projected, its importance was appreciated by the states of the South, resulting in active effort on the part of several of them to secure it, and in addition to the consideration set in in the charter for the grant of exemption from taxation, the exemption was in fact entered as an inducement for the location of said university in Tennessee, a concession which all of said competing states were willing to grant, and without such grant the University of the South would not have been located in Tennessee.

Since its corporation, nearly thirty years ago, your orator has paid taxes upon all of its lands outside of the 1000 acres exempted by its charter, but during all these years, both state and county have recognized the validity of the exemption in its charter of the 1000 acres with the buildings thereon, and other effects and property of your orator and have made no effort whatever to require the payment of taxes thereon.

Recently A. J. Skidmore, (Who is a citizen of Franklin County, Tennessee and the trustee for that county and as such clothed with power to collect the taxes for that county, and for both the state and the county; and also clothed with the power by law to assess and collect all taxes both county and state, the assessment of which was omitted for a period of three years next before such assessment), is now taking steps to assess all and every part of said 1000 acres and all buildings, effects and property of your orator thereon, except the university buildings and the personal property thereon used exclusively for educational purposes.

Said Skidmore as such trustee is now engaged in entering all of said property upon his assessment books for the years, 1885, and 1886, and he has in his hands, as such trustee, the assessment of 1887. The property of your orator, exempt by its charter from taxation, and which has already been unlawfully assessed for the
62 present year, and is now taking steps to assess all and every part of said 1000 acres, and all the buildings, effects and property of your orator thereon, except the University buildings and the personal property thereon used exclusively for educational purposes.

Said Skidmore as such trustee is now engaged in entering all of said property upon his assessment book for the years, 1885, 1886, and he has in his hands as trustee the assessment of 1887. The property of your orator exempt by its charter from taxation, and which has already been unlawfully assessed for the present year, and is now about to be unlawfully assessed by the said Skidmore for the year- 1886 and 1885 is pretended to be valued in such assessment at not less than $100,000.00, and probably much more, and consequently your orator is about to be required to — an unlawful tax upon not less than $300,000.00 for both county and state.

Said Skidmore, as such trustee, is pretending to proceed under chapter 2 of Acts of 1887, and chapter 1 of the Acts of 1885, of the General Assembly of Tennessee.

Representing the state and county, he claims that these Acts permit an exemption from taxation of only so much of the property of your orator as is immediately employed in educational purposes and that all of its property that *so employed is taxable, and hence his effort to subject all of the property of your orator to taxation, save its university buildings, and the personal property therein, immediately employed in educational purposes. (*So in transcript: Clerk.)

The mode of proceeding adopted in said pretended assessment, as your orator understands it, is to assess separately each and every house and lot owned by your orator upon said 1000 acres tract, at its full value.

Upon the face of the assessment, the tenant of each house is named *is* the owner, and hence there are as many assessments as there are tenants.

If the property of your orator were liable for taxes at all, it denies the validity of said proceeding, but as its property is not liable to taxation at all, it will not undertake to point out the irregularities in such assessment.

Your orator is advised that if the Acts under which the said Skidmore is proceeding be susceptible of such construction as he claims for them, they impair the obligation of your orator's contract embraced in its charter, and are therefore void under the contract clause of the federal constitution.

63 And now your orator charges:

(1.) That the exemption from taxation in section 10 of its charter is a valid exemption.

(2.) That after the grant of said charter, it was regularly accepted by your orator, and that upon the faith of such grant from the State it acquired title to all of the real estate and upon the 1000 acres so exempted it invested larger sums of money in educational buildings and also in dwellings and business houses, and that all were constructed upon the faith of the grant of exemption from taxation embraced in said section 10 of said charter, and that the revenue arising therefrom has been devoted exclusively to the support of said university.

(3.) That many donations, devises and bequeaths have been made to your ortaor and employed in the improvement upon said 1000 acres tract, and now sought to be taxed, and that these donations, devises and bequeaths were made upon the faith of the grant by the State in said charter.

(4.) That each and every step taken by said Skidmore and others about such assessment, and every step he is about to take to compel the payment of such tax, is unlawful and void.

(5.) That if said Skidmore is permitted to proceed he will advertise, sell and convey said property, and thereby cloud the title of your orator to its property, while, in fact, the property of your ortaor is in no way liable to such proceeding.

(6.) That the said Skidmore under color of his office is acting unlawfully and oppressively and without authority in attempting to compel your orator to pay the taxes demanded, and that, unless

he is restrained by the injunctive power of this court, he will proceed to sell the personal property of your orator to cause the payment of said unlawful tax, and thereby work irreparable injury to your orator, and to sell said real estate, and thereby cloud your orator's title.

(7.) That your orator has paid all taxes lawfully due from it, both to the state and county.

The premises considered, your orator prays that thes said A. J. Skidmore be made defendant to this bill and for that purpose let process issue for him.

Require him to answer, but not under oath.

As this is the first application for this writ, order a writ of injunction to issue restraining defendant Skidmore from further proceedings on the assessment and collection of said tax.

64 Upon the final hearing declare the exemption from taxation in sec. 10 of your orator's charter, valid.

Declare that said property of your orator so sought to be taxed is embraced in such exemption.

Declare that said Acts of Assembly under which defendant Skidmore pretends to proceed, void in so far as they impair the obligation of the contract of your orator with the State.

Declare all of said property exempt from taxation, so long as your orator retains title.

Declare said injunction perpetual by an appropriate decree. And grant general relief to your orator in the premises.

MARKS & GREGORY,
Solicitors for Compl'ts.

STATE OF TENNESSEE, *Franklin County:*

Personally came before the undersigned, A. S. Marks, and in due form of law made oath that he is the attorney and agent of complainant and the matters and things stated in the foregoing bill as of his own knowledge are true and those stated *in* information and belief he believes to be true.

ALBERT S. MARKS.

Sworn to and subscribed before me this the 3d day of August, 1887.

D. A. LONGO, *J. P.*

Upon complainants' executing bond in the sum of five hundred dollars conditioned as required by law the master at Winchester will issue the injunction as prayed for.

M. D. SMALLMAN, *Judge.*

Endorsed: Filed in my office Aug. 3d, 1887, Clem. Arledge, C. & M.

Original Bill of Franklin County.

The Hon. Walter S. Bearden, Chancellor, Holding the Chancery Court for Franklin County, at Winchester, Tennessee.

THE COUNTY OF FRANKLIN, Complainant,
vs.
THE UNIVERSITY OF THE SOUTH, Def't.

Your orator would most respectfully represent and show to the honorable court that the defendant the University of the South is a corporation, created and chartered by the Act of the General Assembly of the State of Tennessee in January of the year 1858, for the purpose, as recited in the preamble and in the face of the charter of establishing a university that should be under the
65 control and government of the Protest- Episcopal Church, said charter was accepted by use at least and said university was established and located on the top of the Cumberland Mountain within your orator's territory on the line of the railway running from Cowan in Franklin County to Tracy City in Grundy County. A copy of the charter will be had at the hearing. The 10th section of said charter is in the words and figures following, to-wit:

"Be it further enacted, That said University may hold and possess as much land as may be necessary, for the building and to such an extent as may be *us*flicient to protect said institution and the students thereof from intrusions of evil-minded persons who may settle near such institution, said land, however, not to exceed ten thousand acres, one thousand acres of which, including buildings and other effects and property of said corporation, shall be exempt from taxation, so long as said land belongs to said university. Thereafter the defendant corporation acquired by gift large bodies of land, under the power, situated on the top of the Cumberland Mountain in said county, and began the operation of its school or university, which it still continues to do.

It includes its numerous and costly school buildings on the 1000 acres of land exempted for its use in the 10th section of its charter, which, as your orator is informed, was staked off, surveyed and platted as the 1000 acres it should hold as free from the burdens of taxation. All of the funds necessary for the original buildings having been subscribed and paid into the hands of the trustees by a generous public, as your orator is informed and believes.

Your orator now shows the court that some twenty-eight or thirty years ago, it became evident that a town of some considerable size and importance would be built near the top of the Cumberland Mountain on the line of railway running from Cowan to Tracy City and it was certain that the most desirable place for its location was at a point on said line of railway covered by the 1000 acres of exempted land owned by the university and that had been set apart for its buildings, were in fact built and located.

The owners of the railway accordingly leased a lot of the uni-

versity covered by the 1000 acres on which it built its depot, etc., and the university people accordingly proceeded to lay off said 1000 acres or so much thereof as was sufficient into town lots suitable for residences and business houses, divided up by streets, alleys, etc., and leased them to various persons desiring to locate in said town,

66 and for the purpose of building their store-houses, shops, offices, market houses, and other buildings usually needed and built in villages, towns and cities, a great many, perhaps, the large majority of which leases, were made for long terms of years, usually, as your orator is informed, for a term of thirty-three years, with the privilege of holding for ninety-nine years, at the option of the lessees, and your orator shows the court that when a tenant gets a lease for a term of thirty-three years, they erect their own houses thereon, and in addition to the rents received by the university for the lease of the premises, at the expiration of the term of years for which the premises are let, the whole property, house and all, reverts to the university, so that at the end of a comparatively short period of time the university will be the absolute and unconditional owner of the next to the largest town in complainant county. Your orator is advised that no such result could be intended or contemplated by the General Assembly in granting the exemption; none of said lease contracts are registered, but they provide as your orator is informed and believes, for the payment of rent at stated periods and for the payment by the lessees of whatever taxes may be assessed against the lessor on account of the leased premises.

Your orator further shows that many ha*dn*some and substantial r*w*esidences, store houses, shops, offices, and other buildings usually included in villages, towns, and cities, have been built on the lots so laid off and set apart for the purpose of building a town and have been used by the tenants of the university for residences and the ordinary purposes of business, for many years under their contracts with the university.

Your orator further shows the court that although said exempted land has been used for residences and store houses and the like, and for a purpose other than that for which it was exempted in the university's hands, yet the university has under (*sic*) paid the State and County a cent of taxes on any part of said property so used by it and for which the defendant corporation has received thousands of dollars as rents and that it has received those rents of property exempted for a purpose purely educational for over a quarter of a century.

Your orator is advised that said property used as residences, storehouses, offices, shops, market houses, and the like, and not used for the purposes from which the 1000 acres of land on which they are built was exempted by the legislature from taxation and for the use of which by its tenants, the defendant corporation receives rents, is not exempted in its hands, but that it is subject to taxation and should be compelled to bear its just pro rata of the public burden.

67 Your orator is informed and believes and charges that there has never been a dollar of capital invested in the enter-

prise of operating said university, except what has been do-ated by a generous public and that received from lands that were donated by the public and exempted by the state and your orator is advised that the exemption clause of complainant's (*sic*) charter is repealed by the constitution of 1870. If your orator is mistaken in this, he is advised that at any rate, said property is subject to taxation when no longer used for the purposes contemplated by its charter and contemplated by the General Assembly when its charter was granted.

Complainant is advised that the building of towns or the engaging in the real estate business, either on a large or a small scale in exempted property, does not come within the purview and meaning of the defendant corporation's charter and was not the object either expressed or implied of the General Assembly in granting said charter.

Your orator now shows the court that on the — day of July, 1887, A. J. Skidmore, Trustee for Franklin County, charged by the law with the duty of collecting the taxes for the state and county, assessed the property situated on said 1000 acres of land and used by the tenants of the university for the aforesaid purposes for back taxes for the years, 1884-1885, 1886, as it was his duty to do under the statutes in such cases made and provided. He assessed for both state and county taxes for those three years. The trustee went upon the premises, under the instructions of the comptroller and the judge of the County Court and made the assessment, having first solicted the proper agent of the defendant corporation to list said property for taxation for said years.

The trustee made the assessment himself on July 20, 1887, the agent of the university having declined to list it for taxation and on the same day notified Telfair Hodgson. Dean of the Faculty and agent in charge of the University's business af-airs in writing to appear on or before the 2nd day of August, or ten days thereafter, and dispute or correct his assessment or the amount at which the trustee had assessed it, he having declined to list it at all, claiming it as exempt.

For the year 1884, said property is assessed at.....	$9871.00
" " " 1885, " " " " "	99360.00
" " " 1886, " " " " "	105292.00
The county tax, including county tax proper, school and highaway tax for the year 1884.....	$789.67½
The same for the year 1885.....	794.48
The same for the year 1886.....	842.31
Total for three years	$2426.87

68 Your orator now shows the court that, although notified to do so, the defendant corporation declined or did not appear before the county judge to dispute or correct said assessment; but on August 3d, the day after the notice had expired, it filed its original bill in this cause, having first obtained the fiat of the Hon. M. D. Smallman, one of the Circuit judges for the state, enjoining

Skidmore, the trustee, from proceeding with or under said assessment. Your orator is advised that he has the right to bring this original bill for the purpose of showing its interest in said cause and of becoming a party defendant thereto and making its proper defences therein and for its proper relief.

The premises considered, complainants prays that the University of the South be made defendant hereto by the proper process. Let them answer, but not on oath. Let this be filed as an original bill in the nature of a cross-bill.

On the hearing will your honor decree that the property of the defendant, as herein described, is subject to taxation and compel it to bear its just pro rata of the public burden. And will your honor dissolve the injunction. And will your honor on final hearing give the complainant here?n a decree for the taxes due it on said property for the years, for which it is assessed, 1884, 1885, 1886, together with the interest thereon. Grant all such other and further relief as your orator may be entitled to. Grant general relief.

BRANNAN & BANKS,
ESTILL & WHITAKER,
Solicitors for Complainant.

R. F. E. Oakly, Judge of the County Court and financial agent of defendant county makes oath that the facts stated in the foregoing bill are true to the best of his knowledge, information and belief.

R. F. OAKLY.

Sworn to before me this August 9, 1887.

DICK TAYLOR, *D. C.*

We go security for costs.

ESTILL & WHITAKER.
BRANNAN & BANKS.

Endorsed: Filed August 10th, 1887. Clem Arledge, C. & M.

Demurrer and Answer.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee.

The County of Franklin, not admitting any of the allegations in complainant's bill contained, demurs to the bill and assigns the following causes:

69 1st. The bill is without equity on its face.

2nd. The bill shows on its face that the complainant corporation has been using the property assessed for taxation, for a purpose other than that which the 1000 acres of land on which said property is situated was exempted in its hands and for a purpose foreign to the object for which its charter was granted and defendant submits that said property is therefore subject to taxation.

3d. It does not appear upon the face of the bill that a dollar of private capital was ever invested in the corporation upon the faith of the provisions of its charter or otherwise.

The exemption was therefore purely a gratuity upon the part of the State and repealed by the constitution of 1870. Wherefore and for divers other errors in said bill contained and appearing on the face thereof, this defendant does demur thereto and prays the judgment of this honorable court whether it shall be compelled to make any other or further answer to said bill and prays to be hence dismissed with reasonable costs in its behalf expended.

And respondent, relying on his several causes of demurrer as above assigned, for answer to so much and such parts of said bill as it is advised is material or necessary *to* for it to make answer to, answering says:

It admits that the complainant corporation was chartered at the time stated and that the charter is correctly copied in the face of the bill.

Respondent does not know how the fact is, but will require no proof of the allegation that complainant corporation is in the first rank of the universities of the Union as it is advised that it is immaterial how that fact is.

Respondent admits that complainant's charter was adopted by user at least.

Respondent admits that espensive buildings have been erected on the 1000 — exempted by the charter.

Respondent admits that 1000 acres was set apart by survey or otherwise as the part of the land complainant corporation was entitled to hold as exempt after the grant of the charter.

Respondent admits that all the property assessed by the trustee of Franklin County for state and county taxes are lots of ground and buildings thereon located on the 1000 acres of land set apart by the complainant as exempt under its charter soon after the grant thereof.

70 Respondent does not know what effect the building of a town around about the University's buildings has had on the attendance of students, but respondent is advised that however beneficial it may have been, that no authority appears in complainant's charter for the engagement of the complainant corporation in the building of villages, towns, or cities.

Respondent admits that into the town by the complainant corporation there has come a thrifty business population and that the complainant derives a large revenue from the leasage of its property to this population, but respondent denies that it would be impossible to maintain said university without these rents; but if that were true, respondent is advised that this fact would not be material to the determination of the question as to whether the property used by an institution of learning for a purpose other than that for which it was created and other than that for which the property was exempted, is subject to taxation, and respondent is advised that inasmuch as this property has been used for the purpose of building a town, rather

that for the purpose of operating a university, that it should be compelled to bear its just pro rata of the public burden.

Respondent is advised that the power to tax is the highest attribute of sovereignty and that when exemption from taxation is claimed, it cannot be sustained unless the *institution (sic)* of the General Assembly is clear from the language used, beyond a reasonable doubt.

Respondent admits that the state and county have never made any effort heretofore to collect any taxes from this property, but respondent is advised that the fact that the state and county have been so generous in the past is no valid defence to their claim now.

Respondent admits that the trustee has assessed all property situated on the 1000 acres of said land, except such property as is used by the complainant for educational purposes. The trustee first assessed the property to the lessees of the university, but afterward and on the 20th day of July, 1887, under the instructions of the county judge of Franklin County, he assessed the said property to the University of the South as the true owner thereof. On the said 20th day of July the trustee went upon the premises and requested the agent of the University to list said property for back taxes, for the years, 1884, 1885, 1886, respectively, and upon his declining to do so, the trustee made the assessment in person and on the same day served the university agent with written notice that he had made the assessment and that the University appear on or before the day the 2nd day of August, 1887, and dispute or correct said assessment. Complainant failed to comply or
71 to appear on or before the day stated in said notice, but on the day after the notice expired, filed its bill in this cause; at the time the bill was filed, the trustee had his books made out and was ready to proceed with the collection of the taxes, as instructed by the comptroller of the state and the judge of the county court.

Respondent denies that the buildings occupied by the tenants of the University were put there upon the faith of the exemption embraced in section 10 of its charter, but they were put there because it was the natural site for a town, just at the top of the Cumberland Mountain on the line of the Tennessee Coal Company's railroad and it so happened that the University owned all the land in that vicinity and it so happened that the 1000 acres that had been staked off as exempt was the best place upon which to build the town and respondent avers that when the University made leases to its tenants, it did not expect to be longer excused from the payment of taxes; for respondent is informed that each and every lease contains a stipulation for the payment of any taxes that may be assessed against the University.

Respondent denies that every step taken by the trustee in the assessment of said property is unlawful and void. Respondent denies that said trustee is or was acting unlawfully and so as to cloud the title of complainant. Respondent admits that the enterprise contemplated by complainant's charter involved the investment of

a large amount of money and that, in point of fact, a large amount of money has been invested in it, but respondent avers that never a dollar of private capital has been invested in said enterprise on the strength of the provisions of its charter or otherwise; but respondent is advised that any property exempt from taxation in complainant's hands by the provisions of its charter is no longer used for the purposes for which it was exempted even though it were true that private capital had been invested in the enterprise.

Respondent denies that complainant has paid all the taxes due from it to the state and county.

Respondent cannot admit, for he does not know, devised from the property assessed by the trustee has been applied the exclusive use of said University, both if this be material. (The last 3 paragraphs are copied as they are: Clerk.)

Respondent denies that any other state offered any like inducement as exemption from taxation of 1000 acres of land and the other generous provision contained in complainant's
72 charter and respondent denies that the State of Tennessee granted this immunity from taxation as an inducement for the location of the University in Tennessee, but granted it because Tennessee had already been selected as the place of location and the promotion of the objects fully set forth in the preamble of the act incorporating said institution.

Respondent denies that complainant's property is protected from taxation on account of the contract clauses of the federal constitution and respondent denies that complainant's charter is a contract and respondent denies that the Acts of the Assembly under which the trustee of Franklin County is proceeding impairs the obligation of any contract.

Respondent admits as alleged that the said property was assessed by the trustee to the lessees of the University in the first instance and respondent submits that at all events the lessees of the University are not entitled to any benefit of any exemption made for the benefit of the University and respondent submits that the capital invested in the many handsome and substantial residences erected on said 1000 acres by the lessees of said University ought to be taxed and is subject to taxation in their hands.

Respondent, having fully answered, prays to be dismissed with usual costs.

BRANNAN & BANKS.
ESTILL & WHITAKER.

I, A. J. Skidmore, Trustee of Franklin County, adopt the foregoing demurrer and answer of Franklin County as my defence to the bill of the University of the South *vs.* me in as full and complete a manner as if fully set out over my own signature and pray to be dismissed with costs.

A. J. SKIDMORE, *Trustee.*

STATE OF TENNESSEE. *Franklin County:*

R. F. Oakley, Judge of the County Court of Franklin County an agent of the county makes oath that the statement, allegations and denials in the foregoing answer are true and correct to the best of my knowledge, information and belief.

R. F. OAKLEY.

Sworn to and subscribed before me this the 9th day of August, 1887.

DICK TAYLOR, *D. C.*

Endorsed: Filed August 10th, 1887. Clem Arledge, C. & M.

Answer of the University of the South.

THE UNIVERSITY OF THE SOUTH
vs.
FRANKLIN *Franklin* COUNTY.

73 The Answer of the University of the South to the Bill Filed in the Chancery Court at Winchester Against it by Franklin County.

Respondent, while it denies the right of complainant to file its bill in the form in which it is exhibited, and while it insists that it is fatally defective in its averments, yet, to forward this litigation, will proceed to answer its allegations.

1. It is true respondent was incorporated as averred. Its charter was not accepted by user merely, but expressly by a corporate act of the incorporators.

2. Said University was established in Franklin County, on the Plateau of Cumberland Mountains, and on the line of a coal railway, with its terminus at Cowan and Tracy City, as averred.

3. The Act incorporating respondent is a public act and it is therefore needless to answer with respect to its powers and exemptions, as they are shown by the act itself of which the court will take judicial notice.

4. It is not true that the respondent corporation acquired any part of its land by gift. A part of them were conveyed to it in consideration it would agree to establish its University at the place adopted, and part of the lands were purchased by it.

5. It is true that the respondent erected several structures for its University purposes upon that part of its land exempted from taxation. The structures already erected cost, perhaps, as much as $75,000.00, but it will require at least $350,000.00 to erect all the structures for the purposes contemplated by its charter.

It is true that so much of the lands belonging to the respondent corporation as were exempted by its charter from taxation were set apart by survey, their boundary established and designated upon the map of its lands and that this done immediately after the accept-

ance of said charter and before any improvements had been made and placed thereon.

6. It is certainly true that the respondent corporation did not have a dollar of capital stock and that all of its property of every kind came to it as a donation in some form or as the — of such donations. Precisely what is meant by the statement that "all of the funds necessary for the original buildings having been subscribed and paid into the hands of the trustees by a generous public." Respondent does not know but the facts are that while the original purpose was to raise a fund of $3,000,000.00 to equip and endow respondent University, there had been but about $500,000.00
74 subscribed when the civil war began and this sum had been subscribed mainly by the citizens of the State of Louisiana, through the agency of Bishop Polk.

When the subscription was made it was believed by all the incorporators that the whole sum desired would be subscribed without delay or hesitation, and, therefore, in the fall of 1860, the educational structures of respondent were plan-ed upon a scale commensurate with the extensive design contemplated at the time respondent was incorporated, but when the war closed not one stone was left upon another and nearly the whole subscription was lost by the insolvency of the subscribers.

The struggle respondent then had was surpassingly severe. The whole South was completely bankrupt; respondent had its lands, but nothing else. Not until 1867 was an attempt made to realize the hopes of respondent's promoters. The at-empt was then made in the face of difficulties almost insurmountable, with infinite pains and difficulty two wooden structures were built and respondent's University began its career with nine grammar school scholars.

The Bishops of the states of the South united in an earnest effort to place the University upon its feet, but the poverty of the South rendered their efforts unavailing. An earnest appeal was made to the Episcopal Church of the North and while the response was gratifying, yet the aid from that quarter was inadequate.

As a last resort, the Bishops of the Southern states sent one of their members to England to appeal to the mother church for aid and as the r-sult of this appeal sufficient funds were donated to give life, hope and energy to the enterprise.

In this way and from these sources came the money which built respondent's educational structures, save one built by the pre-ent Vice-Chancellor of the University.

It is true about thirty years there was some evidence that a town would be probably built on the lands now owned by respondent. This expect-tion, however, speedily proved illusory. It came about in this way The Sewanee Nursery Company then owned a *a* large part of the lands now belonging to respondent.

Said company, believing the lands had valuable coal on them, built a railway to them and began to mine for coal.

The experiment failed, as the quantity of coal expected was not found.

While this experiment was in progress, there was some expectation

there would be a town there, but before the town was started
75 or even a single house was built, it was found that the experiment was a failure. The railway was pushed on to Tracy City. Sewanee was left thirty years ago a barren waste, without house or inhabitant, and so 28 years ago there was again anticipation that a town would be built there, but the only ground for it was the prospect that respondent University would make it there, and so Sewanee remained a wild waste until respondent in 1867 began improvements thereon. Instead of the fact being as stated by complainant, the truth is that a village at Sewanee was an impossibility until respondent made it possible by establishing the University near there, and using every possible means to keep it in existence. It so happened that while Sewanee is an eminently eligible site for a University, yet the liveliest imagination could not conceive of its eligibility for anything else that could by possibility give birth to a town, and, therefore, respondent denies that it was ever — that a town of some considerable size and importance would be built at Sewanee as charged.

8. It is not true that the railway leased a lot from respondent and erected a depot upon it. The fact being that the depot *o* is on the right of way of the railway and the Sewanee Mining Company as consideration to induce respondent to establish the University there, conveyed to respondent all its land in that vicinity, reserving its right of way.

The railway company had no depot there for the reason that it was a mere forest without an inhabitant or a single article of commerce to contribute to the traffic of a railway.

Since respondent established the University and to accommodate the traffic respondent has created, the railway has built a substantial and valuable depot, and from which complainant collects a tax it would never have had but for the establishment of respondent's University.

9. It is true respondent had all of the lands carefully surveyed immediately after it acquired title to them and Bishop Hopkins of Vermont, who had great reputation for judgment and taste in such matters, was committed the task of laying out the portion of the domain which was expected to be occupied by the educational structures.

To this labor Bishop Hopkins, who had the success of the University much at heart, devoted a great deal of time and, in pursuance of his plans, the tract exempted was set apart by metes and bounds, and the boundaries indicated clearly and distinctly.

The sites for the various educational structures intended by respondent were selected by him upon said tract.

Having selected these sites he had a map made of the whole
76 tract and upon this map streets, avenues and building sites were indicated in such manner as his taste suggested. It was a part of his plan to appropriate an area to each intended educational building and after indicating broad streets and avenues, the area was subdivided into lots of four acres each. It was after

1867 that the attempt was made to improve these lots so as to make them valuable.

The taxable value of the whole tract was not then as much as $1,000. Complainant did not receive a tax upon any lands in its borders of like value and character at that time valued at so much as $1.00 per acre.

It is not at all probable that this tract of land ever paid as much as $50.00 tax altogether to complainant for all the years it had the right to tax it.

It is true that as a part of its scheme to create, establish and sustain its University, it did lease from time to time such number of *d*aid lots for which it could find suitable tenants upon suitable terms.

It is true that various tenants used said lots for residences and business purposes as stated, but the extent of the business and the population of the town are much exaggerated in the bill.

Commencing with nine students nineteen years ago, respondent has now between three or four hundred. But its present attendance has been recently acquired. During the years of its bitter struggle, seventy-five or one hundred and fifty students were all that it had. The business of the town is limited almost exclusively to the supply of the wants of the students, professors and others connected with the University, and the presence of the relations of some of the students and many friends of the University during the summer months. Hence the business of the town is necessarily limited and so limited that from all sources the amount of rent respondent receives does not exceed $1,500.00 per annum.

The annual rent paid by the professors and others connected with the University is merely nominal, for the reason that the small rent charged them is compensated by the moderate amount of their salaries.

In other instances leases have been made at nominal rates, either to reward sacrifices made on behalf of the University, or with the hope of promoting the interests of the University.

It is true said leases have be-n made, from time to time, some for a longer, some for a shorter period of time; some of said leases, as made, from time to time, were for one year, some for ten years, some for Thirty-three years.

77 It is true that by the terms of many of the leases the tenants are required to place particular improvements upon the property leased, but it is not true that at the end of such leases the improvements placed on the lots so leased they revert to respondent.

The facts, of course, are that the whole property, both lots and the improvem-nts thereon are owned by the respondent and the right of the tenant is, of course, limited to the use and enjoyment of the lots and improvements thereon, upon his rendering the payments required of him by his contract, whether that payment be in improvements, in money, or partly in both.

It is perhaps true that respondent's village is second in size in complain-t's county, which is not saying much, but the averments

suggest an erroneous conclusion for the reason complainant has but one town in its borders and that town has probably less than 1500 inhabitants, it has several small villages, but none of them of any size.

Respondent believes it to be true that the legislature, when it granted the exemption to your respondent, did not consider how respondent would pay for the improvements placed upon the land exempted and for the plain reason it was a matter wholly immaterial to the state how they were to be paid for.

It is probable that none of said leases are registered.

10. It is true that said leases provided for the payment of rent at stated periods and stipulated that the tenants should pay the taxes assessed thereon, but the latter stipulation has a fixed and certain meaning understood quite well by the complainant, and while this statement is made in the bill suggestive simply, yet respondent desires to better explain it, so as to avoid the possible difficulty of misinterpretation.

It will be seen from the charter and amendments thereto, granted respondent by the legislature, that it is clothed with certain municipal powers.

When respondent came to lease its lots, grade and improve the streets and side walks, it was found that by reason of the character of the soil, the repairs of its streets and sidewalks would be a constant and considerable expense. In addition it was necessary to have municipal officers to preserve order and enforce the laws.

To accomplish these objects, and out of abundant caution, the charter of respondent was so amended by the Chancery Court as to confer power upon it to lay a tax upon the property to meet these necessary demands for these municipal purposes.

Before this was done, by a formal request made by respond-
78 ent's commissioner, the attention of the Board of respondent's Trustees was called to the fact that the lessees had not taxes to pay upon the property they occupied belonging to the respondent and that it was just that the lessees should contribute to the municipal tax, as they had the benefit of the improvements made upon the streets and sidewalks and the benefit of the protection a municipal government gave. After this had been done and to compel the prompt payment of said tax, as in many instances its payment could not be otherwise enforced, a stipulation was inserted in each lease for its enforcement. This was not only well understood by respondent and its lessees, but by complainant and the state as well, since it was known to all and recognized by all that respondent's property was exempt from taxation, and all parties so treated it for nearly thirty years.

11. The statement that many handsome and substantial residences, store houses, shops, offices and other buildings, usually erected in large towns and cities, have been built on the lots as laid off, is an exaggeration.

Aside from the residences of those connected with the University, there are comparatively few in number and altogether yield respondent about $1500. per year rent.

12. It is not true that any part of said property has ever been used for any purpose other than that contemplated by its charter. Respondent has done all in its power to make said property as profitable as possible and every dollar it has been made to yield has been applied to the objects contemplated by respondent's charter and after such exclusive dedication, it has not been able to do more than approximate the purposes of its charter and to accomplish these ends it has been compelled to incur a large debt and although the rents it gets are all applied to said debt, yet they are not sufficient to pay the interest thereon.

13. The inference that the renting of its property by respondent, to attain means to sustain the University renders it subject to taxation is a misconception. This can be said with no more reason than it may be said its bonds and other — of debt are taxable, since the interest thereon is applied in the same way.

14. Respondent answers that no part of its property has been used for any purpose whatever other than for the design of its creation. Respondent repeats that the whole income of said property is devoted exclusively to the objects authorized and contemplated by its charter and not otherwise.

79 Respondent has never engaged in the real estate business, nor in the building — a town. It has done nothing with respect to its property, save to exert itself to the utmost to build up its university.

15. It is alleged the constitution of 1870 meant to impair respondent's contract with the state; it is, of course, unavailing for that purpose.

16. The legislature having complete power to grant the exemption from taxation, coupled with the grant but one condition, and that condition is that respondent should continue to own the property. As to how respondent should use it is no concern of complainant. The sole power complainant has to tax at all, is derived from the state and the state which gave complainant the power to tax, gave respondent its exemption.

17. The entire statement of the bill with respect to the pretended assessment is untrue.

What A. J. Skidmore pretended to do on the —d day of July, 1887, respondent does not know, as the facts are not before it.

But it is not true that he is clothed by law with the power to make assessments. If he had such power in any case, it is expressly limited by law to assessments omitted within three years next before such assessment is made. The period fixed by law for 1884 was in the month of January for that year and consequently was more than three years before the pretended assessment in July, 1887.

It must be untrue that Skidmore acted under the authority of the Comptroller of the State, as the Comptroller denies that he had any knowledge of or connection with the attempt to tax respondent's property.

All the statements with respect to the pretended assessment are untrue and misleading. As soon as respondent was advised that it

was claimed its exempt property was liable for taxation and that steps were about to be taken to attempt to subject it to taxation, it promptly turned the matter over to its attorneys. Complainant was then represented by the same solicitors who bring its bill.

Respondent's attorneys had an immediate conference with them and it was then agreed that immediate steps should be taken to have the question of respondent's liability to be taxed submitted to the courts. Respondent's attorneys stated to them that they would raise the question by a bill and suggested that all the facts could be agreed to and the case heard at once.

This was assented to.

The bill was prepared as speedily as possible and could
80 and would have been filed before the ten days expired, but for the plain inference that no advantage would be attempted by reason of the lapse of the ten days.

The bill was drawn and handed to one of complainant's solicitors before the time had expired.

It was perfectly (*sic*) to have had the injunction then, but supposing no advantage was dreamed of, and that the case was to be heard upon its whole merits by agreement, respondent's attorneys were thrown off their guard by what was supposed to be the mutual agreement. Not until the day the bill was filed was it suggested to respondent's attorneys that they preferred a formal injunction and at once it was procured, but the attorneys did not then suspect that any attempt had been made to make the pretended assessment conclusive, as — the amount until said bill was filed.

In this manner respondent was misled and for that reason only respondent's attorneys failed to make defence against the great injury done it by this effort to make such assessment conclusive as to the amount thereof, or for any other purpose. In fact the steps required by law to reach the result designed by complainant was not in fact taken and respondent denies the power of Skidmore by law to make such assessment in any case, and the power of said county judge to determine the rights of respondent in such matter of taxation.

The pretended assessment is not only grossly excessive, but in fact operates as a practical confiscation of the property of respondent.

The amount of taxes claimed for complainant's county is something over $800.00 per annum. The county cannot make a levy in excess of that for the state and consequently the whole amount for the annual assessment, is over $1600.

For the rents of this property respondent receives but about $1500. out of this sum it is compelled to pay the cost of leasing and collecting its rents and it therefore appears that all the rents it is possible for respondent to receive upon this property is more than $200., less than the tax sought to be assessed upon it. Respondent is advised that such result is so monstrously unjust that the court will not tolerate it.

The entire real estate of the complainant county by rule of assessment adopted by its offiers making the assessment, is placed at a value of not more than one-half of its real value, while respondent's

property has been pretended to be assessed at more than double its real cash value and by unwarranted proceeding adopted respondent has been denied the eq-al protection of the law.

81 Respondent again denies the assertion that it declined or refused to appear before the county judge on the third of August and it again positively asserts it did not do so for the reason, on that very day complainant's attorneys had respondent's bill in their possession and were discussing with respondent's attorneys as to the speediest manner to have the whole question settled in the courts.

There was no hint that any steps would be taken elsewhere to prejudice respondent's rights in any manner whatever. It is certainly true that they did not say no such step would be taken, but it is equally true not a word was said indicating such purpose or indicating that the case was not left open for respondent's defence upon all points.

Respondent for its defence says that said pretended assessment is not only illegal for want of power and because the power was not possessed, but because it is grossly unjust and attained under such a state of facts that the courts will not permit it to stand.

Respondent shows the court that complainant's attempt to exact such tax is entirely indefensible. It stood by and admitted respondent's exemption for nearly thirty years. It has had for years the benefit of respondent's University in its borders. It has had the benefit of taxes upon merchants, privileges and personal property brought within its borders by respondent.

The tract exempted did not pay it a tax upon a value exceeding $500.00, if so much.

All the property respondent has is the fruit of infinite sacrifice and exertion. Its University is now struggling under a large debt and to bring it to a point where it now is is the result of the severest exertion and economy.

If complai-ant and state are now permitted to step in and take the whole of respondent's rents it will be a serious and dangerous blow to respondent's University.

If respondent had known or suspected that a tax greater than the value of the rents it would receive, would be imposed upon it, it certainly would not have made the attempt to improve its property. Its sole purpose was to raise the means to forward the university.

To that end it applied every dollar. To permit the county and state, after the interest of both have been so much promoted by respondent to now turn upon respondent and under the guise of taxation practically paralyse respondent's University would be the grossest injustice and this injustice is magnified when it is seen that while respondent was developping its property all these years

82 and leasing it as exempted property, both the county and state admitted its exemption from taxation and permitted it both to improve its and lease its property, on their assumption.

Respondent having fully answered prays to be *be* dismissed.

MARKS & GREGORY,
Sol's for Respondent.

STATE OF TENNESSEE, *Franklin County:*

Personally, came before me the undersigned Telfair Hodgson and in due form of law made oath that he is the Vice Chancellor of the respondent and that the matter and th-ngs stated in the foregoing answer as of his own knowledge are true and those stated as upon the information of others he believ-s to be true.

TELFAIR HODGSON,
Vice-Chancellor.

Sworn to and subscribed befo-e me this the 19th day of Oct., 1887.

SAMULE C. HOGE,
Notary Public.

Endorsed: Taken out of the post office at Winchester by me and filed in my office Oct. 21, 1887. Clem Arledge, C. & M.

Demurrer of the State of Tennessee.

To the Honorable W. S. Bearden, Chancellor presiding at Winchester:

The respondent, the State of Tennessee, by attorney, comes and defends the wrong and injury, etc., and demurs to the bill of complaint of the University of the South filed against it said state and for cause assigns the following:

(1.) There is no matter of equitable cogniz.ance charged in the bill.

(2.) The State of Tennessee is a sovereign power with the right and duty to lay and collect taxes to support her sovereignty; these being essential to its existence cannot be questioned, resisted, or enjoined by those living within the state and subjected to her jurisdiction and laws and no court can enjoy the same and the injunction being the only purpose of the bill, it must be dismissed.

(3.) The complainant has a plain and unembarrassed remedy provided by law for the trial of the legality of the assessment and it has precluded any other mode. There is no question of equity presented for adjudication.

(4.) The bill shows that according to the constitution and laws of the state of Tennessee that complainant's property is subject to the assessment and tax.

83 5. The bill shows that the property actually used for school or theological purposes is not embraced in the assessments complained of but they have their exemption under the constitution and laws, as other like institutions have, that they have no other or higher rights of exemption and have no higher claims to them than other similar institutions *institutions* and in fact could have none under the constitution of 1834 or that of 1870; and no law has sought to give them any special exemption and if it did the law would be unconstitutional and void.

6. The legislature of the state has no right to give any special exemption if such had been done and the state had omitted to *tax*

because of that exemption, she could at any time assume the right to tax and exercize it.

7. There is no — between the state and complainant that this exemption should be granted and none could have been made under the constitution. And no consideration was paid for such and if such voluntary grant had been made the legislature could have repealed it.

8. The bill and its exhibits show that the complainant divided up the lands in question and leased them out for periods of years of 33 each and delivered the lessees the personal control and management by written conveyances and that those persons have built residences, business houses, shops and other buildings in no wise connected with complainant's educational institution and not used by them, but are used for other purposes and for undivided enjoyment and profit, and complainant's and exhibits show that said lots were leased for a profit and complainant contested with the lessees that they (the lessees) were to pay the taxes on the same.

Wherefore respondent prays judgment of the court that said bill should be dismissed.

J. J. & T. J. WILLIAMS,
Attorneys for the State.

Endorsed: Filed Nov. 21st, 1887. Clem. Arledge, C. & M.

Entries on the Rule Docket.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee, &c.

Marks & Gregory, Solicitors for Plaintiff.
Marks & Gregory Security " "

August 3d, 1887, Original Injunction Bill filed to prevent
84 collection and asses-ment of taxes.

August 3d, 1887, Subpœna to Answer, injunction, writ and copy of bill issued to sheriff of Franklin County for the defendant.

August 3d, 1887, A. J. Skidmore, Trustee, etc., acknowledged service of subpœna to answer and injunction and writ.

August 10th, 1887, demurrer and answer of Franklin County filed and notice given.

August 10th, 1887, Original bill of Franklin County filed in the nature of a cross-bill, with Estill & Whitaker and Brannan & Banks securities.

October 21, 1887, answer of the University of the South filed and notice given.

November 21st, 1887, depositions of W. A. Gibson and A. J. Skidmore filed.

November 21st, 1887, Exhibit "A" to A. J. Skidmore's deposition filed.
" " " , Deposition of Floyd Estill filed.
" " " , Demurrer of the State of Tennessee filed and notice given.
November 25th, 1887, Deputy Sheriff, W. H. Maxey, returned subpœna to answer for writ, executed.
November 28th, 1887, Deposition of G. R. Fairbanks filed.
November 28th, 1887, deposition of W. L. Myers filed.
November 23d, 1887, subpœna for writ issued to the sheriff of Franklin County.

Deposition of Floyd Estill.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee, etc.

Deposition of Floyd Estill Taken on Behalf of the University Before the C. & M. at His Office.

1. As soon as you gave notice was it not agreed that the courts must settle the question, did not one of the solicitors say he would file the bill in equity. Did he not draw the bill and hand it — you with the proposed agreed state- of facts. Did you not take both and hold them for two or three days and then return them *abd* say complainant had better file its bill and get a fiat?

Did you not say this the morning after the county judge had undertaken to render judgment?

Did you inform complainant's solicitor that it was intended
85 to proceed before the county judge?

Did you not hold complainant's bill in your possession the day the action was taken with a view to speedy suit to have the question settled in court?

Did not complainant's solicitor agree with you as soon as notice was served that they would do — they could to give you a speedy trial and was not the bill drawn and agreed stat- of facts to carry out that agreement and was not the fiat obtained and the bill filed in a few moments after you gave notice you preferred a fiat and the bill filed?

A. At the time the county trustee, A. J. Skidmore, made the assessment of this property for taxation, I prepared for him a notice, a copy of which he had served on the *the* University to appear before the county judge named and dispute the assessment, or have it corrected as required by the Act of 1879, under which the property was assessed, entitled an act for the more ridgid collection of the revenue. It is true as asked that I had several conversations with Governor Marks in which we mutually agreed that the question must be settled by the courts and in which he stated that he intended to file a bill in equity and in which I said to him that so far as the

county was concerned for which I was one of the solicitors, that it would make no question on the jurisdiction of the Chancery Court to stay collection of taxes, but that I preferred to litigate the question in the chancery court.

Gov. Marks did prepare a bill and a proposed state- of facts, which — handed me to submit to the other attorneys of the county and to Judge Williams, who represented the State.

I did submit them and probably kept them a day or two, I don't know how long, but finding that we couldn't agree in the statement of facts, I then returned them to Gov. Marks, stating that we could not agree.

I don't know whether this was the morning after the county judge had undertaken to render judgment on the assessment or not. I did not have that matter in my mind, supposing that if the assessment didn't suit the University, they would go before the county judge and have the same corrected. I did not inform the complainant's solicitor that it was intended to proceed before the county judge, nor did I appear before the county judge myself; in fact I never thought anything more about the notice to appear before the county judge, after I had written notice and handed it to the county trustee, until on reading the complainant's bill, I noticed that it was filed after the time had expired.

I don't know whether I had the bill in my possession at
86 the time the county judge took action or not. I know though that I did not understand myself as agreeing to what Gov. Marks seems to think I did; but he evidently thinks so; and we will not take any advantage in regard to the assessment on account of his misunderstanding. With this statement, I suppose it is unnecessary for me to answer further.

While these negotiations were going on, we were trying to get the matter before the court with as little formality or expense as possible.

FLOYD ESTILL.

Endorsed: Filed Nov. 21st, 1887. Clem Arledge, C. & M.

THE UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee.

FRANKLIN COUNTY
vs.
UNIVERSITY OF THE SOUTH.

Depositions of A. J. Skidmore and W. A. Gibson, taken by consent at the office of the C. & M., November 21st, 1887, to be read as evidence on behalf of the state and county in the causes.

Deposition of W. A. Gibson.

1. Did you make the assessment of the property of the University and ought it to be taxed in this cause?

A. I did not.

2. Are you acquainted with the property sought to be taxed?
A. I am with most of it.
3. What is the property located on, the 1000 acres used for?
A. Used for residences and store houses, the same as most towns.
4. What is the population of Sewanee?
A. It is nothing but a guess. I suppose between 3 and 4 hundred.
5. You mean 3 and 4 hundred is the permanent population, do you not?
A. Yes.
6. How many people are generally there in the summer time and I mean students, visitors and the permanent population?
—. ——.
7. I will get you to state if the whole of the town of Sewanee is not covered by the 1000 acres of land the University claims as exempt?
A. I do not know the bounds of that 1000 acres.

W. A. GIBSON.

Sworn to and subscribed before me this the 21st of November, 1887.

S. L. ARLEDGE, *D. C. & M.*

Deposition of A. J. Skidmore.

1. What office do you hold in Franklin County?
87 A. I am trustee of the county.
2. Did you make an assessment of the property sought to be taxed in this case; if so for what years and at what valuation for the different years?
A. I did; for 1884 it aggregated 98,710.00; 1885, 99,360.00, 1868, $105,290.00.
3. How did you arrive at the value of the property.
A. By the improvements that were on it.
4. Did you consult with the tenants with regard to the value of the lots that they occupied while making your assessment?
A. Some of them I did, some I did not.
5. Did you assess the property at a fair valuation?
A. I did.
6. What is the property that you assessed used for?
A. Well, it is for dwelling houses, store houses and business houses and for a hotel.
7. I will ask you if there is not a large hotel building now for the accommodation of the public and summer visitors located on the University's property which they claim is exempt?
A. There is a large hotel there, but I am not sure without looking at my taxed book. I have examined my tax book and find that it has not heretofore been assessed for taxes.
8. Does your assessment include the houses that the professors who teach at the University live in?
A. It does.

9. Did you assess any property belonging to the University actually used for school purposes?

A. I did not.

Cross-examined:

1. Is it not true that all the property assessed by you was property leased by the University to different parties, the proceeds of which went to the University for the benefit of the University school, grounds and schools?

A. Well, I so understood that it was leased by the University to the parties; but as to the application of the proceeds, I can't say how that is.

2. Has it not been the *argument* of the assessors of this county to value all real estate for taxation at much less than one-half of its real value?

88 A. I don't know as to the *argument;* that is the custom generally though.

3. Is it not true that the real property of this county has been so assessed?

A. I think so generally.

4. What is it that gives value to town lots and houses in Sewanee? Is it accessible to trade of any kind and if so what and where does the trade come from?

A. Well, the improvements and demand for them; they seem to be all occupied, there trade among the mere*g*ants there and the *the* railroad, all the produce they buy comes pretty much from the valley and other points. The trade is caused from the large number of students there and them keeping boarding houses for the students.

5. Were you not informed when your assessment was made that the question of assessment was to be tested and was it not agreed on both sides that the question was to be tested in the courts before any further steps were taken?

A. I so understood it that it was to be tested by the courts.

Re-examined:

1. Did you not say to Doctor Hodgson when you went to Sewanee to make the assessment that you had come for that purpose and requested him to list the property of the University not used for University purposes, for taxes and value the same and did he not decline to do so and did you not notify him that you had made the assessment after — was done and notify him to appear before the judge of the county court to dispute or correct it and if you did so, please make a copy of your notice and exhibit to your deposition?

A. I did and he declined and I make a copy of the notice exhibit "A" to my deposition.

Recross-examined.

1. State what Doctor Hodgson said when you approached him on the subject, what reasons he gave you for declining to value the property or giving a list of the property?

A. He claimed that they were exempt by their charter from taxation.

A. J. SKIDMORE.

Sworn to and subscribed before me this Nov. 21, 1887.

S. L. ARLEDGE,
D. C. & M.

Endorsed: Filed Nov. 21st, 1887. Clem. Arledge, C. & M.

89 EXHIBIT "A" TO A. J. SKIDMORE'S DEPOSITION.

To the University of the South:

Take notice that I have on this the — day of July, 1887, proceeded as directed by the Act of the General Assembly of the State of Tennessee passed March 12, 1879, entitled "An Act for the more rigid collection of the revenue" and the acts amendatory thereto *proceeded* to assess for back taxes for the years 1884-5-6, respectively, all leaseholds property belonging to your corporation and other property not used exclusively for the purpose for which the University of the South was created and the Rev. Telfair Hodgson in charge of the business af-airs of the University acting for and on behalf of the corporation, having declined to list said property for taxation for said back taxes for the years 1884-5-6, I proceeded as the law directs to make said assessment in person, on the day above stated. And having been informed by the said Hodgson acting for and on behalf of the University, that the said University denies the right of the state and county to tax said property.

This is, therefore, to notify you that you appear before the Hon. R. F. Oakley, judge of the county court, on or before Wednesday, the 3d day of August, 1887, and dispute the assessment and the right to tax your property, or I will proceed as the law directs to collect said taxes. This July —, 1887.

Endorsed: Executed by leaving a copy of this notice with Telfair Hodgson, Dean of the Faculty and officer in charge of the business affairs of the University. This July 21, 1887. A. J. Skidmore. Filed No. 21, 1887. Clem Arledge, C. & M.

Deposition of W. L. Myers.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee.

The deposition of W. L. Myers, taken by consent in the above cause in the presence of solicitors for commplainant and defendant in the above cause, to be read as evidence for the defendant.

1. Where do you live? and what is your occupation and state of you ever made an assessment of the property sought to be taxed in this cause and how you arrived at its value?

A. I live at Sewanee, in the county, and am constable of the 18th civil district. I did make an assessment of the property sought to be taxed in this cause to the owners thereof. I just put the
90 property down at what I supposed it to be worth and made an affidavit that I had arrived at its value as required by law, to the best of my skill and ability. A. J. Skidmore — up the amounts and I think it amounted to about $100,000 for the years 1884-5 and 6, respectively. Mr. Skidmore afterwards made an assessment of the same property to the University as the owner of the same. I made this assessment in this year, 1887, in July.

2. For what was the property you assessed used?

A. Well, it was used for various purposes. Some of it for dwelling houses, and some for business houses.

3. I will ask you if there was not a large and handsome hotel included in your assessment?

A. Well, there is a hotel there, but not necessarily a large and handsome one; it is considered a large one for a county town, I suppose.

4. What is the value of that hotel?

A. Well, I don't know. The building and grounds of the hotel is perhaps worth $5000, and there is another house leased worth perhaps $3000 that is used by the hotel company as a part of the hotel.

5. Did you ever act as assessor for the 18th civil district of Franklin County? If so, when?

A. I acted as assessor in 1886.

6. Did you assess the property to the lessees, taking into consideration its location, at any higher rate of value than you did like property when you were the regular assessor in 1886?

A. Well, I don't think so; in 1886 I delivered a schedule to the property owners and they put down their own property and I assessed it at their valuation.

7. What is the practice of the University with reference to leasing this territory, I mean who builds the house on it after it is leased and what is the length of lease, how many years?

A. The lessee builds the house; the term of lease varies, some for ten, some for thirty-three, and, I think, some for fifteen years; the lessee pays so much per annum, varies according to location.

8. The lessees pay so much ground rent do they not?

A. Yes, they pay so much for the use of the ground.

Cross-examined:

1. State, if you know, for what purpose the money received for rent or on leases are used by the University?

A. Well, it goes into the University treasury and is used in erecting buildings for the University and keeping up the grounds,
91 etc., probably paying the professors. I don't know whether they pay any of them or not out of that particular fund.

Re-X Ex.:

1. What is the population of Sewanee?

A. I don't know. I think it was about 800 in 1880.

W. L. MYERS.

Sworn to and subscribed before me this the 28th of November, 1887. S. L. ARLEDGE, *D. C. & M.*

Endorsed: Filed Nov. 28th, 1887. Clem. Arledge, C. & M.

Agreement.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee.

In this cause it is agreed by the parties that the deposition of Maj. Fairbanks need not be copied, but made part of the transcript as it stands that the original may be used and this agreement copied by the clerk in the transcript.

ESTILL & WHITAKER,
For Defendants.
MARKS & GREGORY,
For Complainant.
BRANNAN & BANSK,
For Defendants.
——. WILLIAMS,
Attorney for the State.

Deposition of Geo. R. Fairbanks.

Questions to be asked Major George R. Fairbanks.

1. If at any time you were connected with the University of the South state fully when you became so connected with it, how long you were connected with it, and when your connection with it ceased, if at all?

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee.

Pending in the Chancery Court at Winchester, Tennessee.

And

FRANKLIN COUNTY
vs.
UNIVERSITY OF THE SOUTH.

Pending in the Same Court.

Deposition of George R. Fairbanks, witness for the University of the South in the above named cases, taken upon interrogatories on the 24th day of November, 1887, at Fernandina, Nassau County, Florida.

The said witness, GEORGE R. FAIRBANKS, aged sixty-seven years, being duly sworn, deposed as follows:

1. To the first interrogatory witness says:

I became connected with the University of the South as one of the trustees chosen by the diocese of Florida in the year 1857 until 1866, and afterwards in the year 1866, as trustee from the diocese of
92 Tennessee. I was chosen Commissioner of Buildings and Lands in 1867 and held that office until 1879. I was trustee from the diocese of Tennessee from 1866 until May, 1875, and again a trustee from the diocese of Florida from 1881 until the present time.

2. If you know who it was conceived the scheme of said university and brought it to the attention of the Episcopal Church of the South, state who it was and when and in what manner he brought the subject to the attention of the public?

(Excepted to for irrelevance.)

A. To the second question direct witness says:

The scheme of the University owed its active conception to the Right Reverend Leonidas Polk, Bishop of Louisiana, who brought it to the attention of the bishops of the dioceses of Tennessee, Georgia, Alabama, Arkansas, Texas, Mississippi, Florida, South Carolina, and North Carolina, and through them to the Episcopal Church at the South, by a printed letter, in pamphlet form, dated at New Orleans, July 1st, 1856.

3. If you have a copy of such printed letter before you, make a part of your answer to this question so much of it as indicates the general scope of the university intended?

(Excepted to for irrelevancy.)

A. To the third direct interrogatory witness says:

I have a copy of the printed letter referred to now before me and I quote from the seventh page of such printed letter the following paragraph to indicate the general scope of the intended university, viz:

"I believe now is the time at which we may found such an institution as we need. An institution to be our common property, under our joint control, of a clear and distinctly recognized church character, upon a scale of such breadth and comprehensiveness as shall be equal in the liberality of its provisions for intellectual cultivation to those of the highest class at home or abroad, and which shall fully meet the demands of those of our people who require for their children the highest educational advantages, under the supervision of the church."

4. What was the result of that letter, and if you say the bishops of the southern states united with Bishop Polk in the scheme, state when, where and how this was done; and, if you say the bishops of the southern states united in an address to the Episcopal Church of the South, give the names of the bishops and if you have a copy of their address before you, copy so much of it as may show the nature and scope of the intended university?

93 (Excepted to for Irrelevancy.)

A. To the fourth direc- interrogatory witness says:

The result of this letter was a conference of the bishops to whom the letter was addressed at Philadelphia in Oct-ber, 1856, while in at-

tendance upon the General Convention of the Episcopal Church, and, as they say, "after mature deliberation and consultation with the leading clergymen and laymen of their several dioceses, to propose to the members and friends of the Protestant Episcopal — in the southern and southwestern states, to unite in founding such an institution, and they thereupon issued an address printed in pamphlet form, 'An address to the members and friends of the Protestant Episcopal Church in the dioceses of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee,' dated Philadelphia, Oct. 23d, 1856, and signed by: James H. Otey, Bishop of the Diocese of Tennessee; Leonidas Polk, Bishop of the Diocese of Louisiana; Stephen Elliott, Bishop of the Diocese of Georgia; N. H. Cobb, Bishop of the Diocese of Alabama; Geo. W. Freeman, Bishop of the Diocese of the Southwest; W. M. Green, Bishop of the Diocese of Mississippi; F. H. Ruledge, Bishop of the Diocese of Florida; Thomas F. Davis, Bishop of the Diocese of South Carolina; Thomas Atkinson, Bishop of the Diocese of North Carolina.

I embrace in this my answer the following extract from the printed address referred to, viz., from page 15:

"We have, therefore, resolved, after mature deliberation and consultation with leading clergymen and laymen of our several dioceses, to propose to you to unite our strength in founding an institution upon a scale of such magnitude as shall answer all our wants. This, we propose, shall be a university with all the faculties, theology, included, upon a plan so extensive as to comprise the whole course usually embraced in the most approved institutions of that grade, whether at home or abroad."

"We have thus, dear brethren, presented and developed a measure which we regard as the most important, in view of all its relations, ever presented to the American Church. For ourselves, we are deeply persuaded that it far transcends in the promise of its usefulness any merely local or diocesan enterprise it would be possible for our dioceses to get up separately; and that its combinations are of a character to ensure always to our children and to our children's children, to many generations, the largest and most varied amount of talent for their intellectual culture, as well as the soundest moral and religious influence, it is in our power to provide for them. To
94 do this is to make the best investment for our posterity, and to lay upon the altar of our country the most appropriate offering that could be tendered by the citizen of the christian."

5. State when, where and under what circumstances the first convention was held in response to the call of the bishops for the purpose of developing the scheme set out in their letter and who composed that convention?

(Excepted to as irrelevant.)

A. To the fifth direct interrogatory witness says:

The subject of the university having been thus publicly brought before the bishops, clergy and members of the Protestant Episcopal Church in the various dioceses named in the address of the bishops,

trustees were appointed by the various diocesan conventions to meet at Lookout Mountain near Chattanooga on the 4th day of July, 1857 "to confer" (as stated in the official report of the meeting) "touching the establishment of a university." The trustees convened at the Mountain House on Lookout Mountain on the 4th day of July, 1857. There were present the Right Reverend James H. Otey of Tennessee, the Right Reverend Leonidas P-lk, of Louisiana, the Right Reverend Stephen Elliott, of Georgia, the Right Reverend N. H. Cobbs, of Georgia, the Right Reverend W. M. Green, of Mississippi, the Right Reverend F. H. Rutledge of Florida, the Right Reverend T. F. Davis, of South Carolina, and clerical and lay trustees from the several dioceses, viz: Rev. M. A. Curtis, D. D., from North Carolina, Reverend Alexander Gregg, from South Carolina, Rev. Henry C. Lay of Alabama, Reverend W. W. Lord of Mississippi, Rev. W. T. Laycock, D. D., of Louisiana, Rev. J. W. Dunn, of Texas, Rev. David Pise, of Tennessee, Mr. Thos. D. Warren, of North Carolina, Mr. C. T. Pollard, of Alabama. Mr. L. A. Anderson, of Alabama, Mr. G. S. Guion, of Louisiana, Messrs. Francis B. Fogg, and John Armfield of Tennessee."

6. If you have an official copy of the proceedings, copy from them the first motion made leading to the organizing of the proposed university?

(Excepted to as Irrelevant.)

To the 6th direct interrogatory witness says:

I have an official copy of the proceedings of that meeting before me and copy from its pages 15 and 16 as follows:

"The Rt. Rev. Bishop Polk gave notice of a motion to appoint the following committees: (1) of Location; (2) To obtain a Charter; (3) Of Ways and Means; (4) Of Organization; or Program and Working Machinery; (5) Of Construction and Building."

95 7. Copy so much of said report as shows all that was done by that convention with respect to location and charter for the university.

A. To the seventh interrogatory witness says:

I further copy from the official re-ort of proceedings so much as sh-ws all that was done by that convention in respect to a location and charter for the university. As follows from pages 19 and 20 of said report. "The Rt. Rev. Bishop Polk offered the following resolutions:

Resolved that a committee be appointed consisting of one from each diocese to collect information on the subject of location of the proposed university and report to this board at an adjourned meeting to be held at —— on — day of ——.

Resolved: 2. That a committee be appointed to -repare a charter, to be submitted to said adjourned meeting, on motion of Rt. Rev. Bishop Elliott, the first blank *aws* filled with the words "Montgomery, Alabama;" on motion of Mr. Warren, the second blank w-s filled with the words, "Wednesday, the 25th day of November next; both resolutions were thereupon adopted.

The Rt. Rev. president submitted a number of communications

from the people of various localities, inviting the convention to consider the local advantages which they offered, which communications were all referred to the committee on location.

The President announced the following committeess on location: Rt. Rev. Bishop Polk of Louisiana; Rt. Rev. Bishop Elliott of Georgia Rt. Rev. Bishop Rutledge of Florida; Rt. Rev. Bishop Atkinson of North Carolina; Rev. Dr. Pise, of Tennessee; Rev. Mr. Greegg, of South Carolina; Rev. Mr. Dunn, of Texas; Mr. Geo. S. Yerger, of Mississippi; Mr. B. F. Fogg, of Tennessee; Mr. J. S. Guion, of Louisiana; Mr. J. L. Manning, of South Carolina.

On motion of Mr. Warren, the Rt. Rev. President was added to the committee on location. And on motion of the Rev. Dr. Leacock, Mr. G. S. Yerger was added to the commit-ee on charter.

8. If said convention united in a declaration of principles and you have a copy of it, copy the entire in your answer?

(Excepted to as irrelevant.)

A. To the 8th direct interrogatory, witness saith:

Said convention did unite in a declaration of principles. I have a copy of same as set forth in the original report official report of said convention and copy same from pages 21, 22, and 23 as follows:

"Declaration of Principles, set forth and subscribed by the trustees in convention assembled. We the undersigned bishops and
96 delegates of the diocese of North Carolina, South Carolina, Georgia, Florida Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee, do hereby resolve to establish a university upon the following principles:

1. The university shall, in all its parts, be under the sole and separate control of the Protestant Episcopal Church, represented through a Board of Trustees.

2. The Board of Trustees shall be composed of the bishops of the dioceses above named *ex officio*, and one clergyman and two laymen from each of said dioceses, to be elected by the convention of the same. The joint consent of the bishops as an order, and of the clerical and lay trustees as another order, shall be necessary to the adoption of any measure proposed. The senior bishop, by consecration, shall always be president of the Board.

3. This university shall not be put into operation until the sum of at least five hundred dollars, be actually secured.

4. The funds subscribed to this university shall be all considered as capital, to be preserved untouched for any purposes connected either with the organization or management of the university, provided that donations and legacies may be received for such objects as the donors may indicate.

5. There shall be a treasurer appointed in each diocese by the convention of the same, to whom shall be delivered cash, notes, bonds, stocks or titles to lands, obtained as subscriptions in that diocese; whose duty it shall be, under the advice of the standing committee, to invest the cash and all money which shall be derived from the realization of the above-mentioned private securities, in the best

public securities, or other safe investments, paying over annually to the Treasurer of the University the interest of the amount subscribed.

6. There shall be a treasurer of the corporation, who shall receive the interest annually from the diocesan treasurers, and expend it under the direction of the Board of Trustees.

7. The amount subscribed in any diocese, as above, shall, in the event of the dissolution of the corporation, be returned to the donors or their legal representatives and, in case of their being no legal representatives, then it shall revert to the diocese.

8. The location of this university shall be as central to all the contracting dioceses, as shall be consistent with the necessary conditions of location.

97 9. No diocese shall be bound by these principles to furnish any particular sum of money, but its contribution shall be voluntary, according to its pleasure and ability.

10. The signatures to this declaration shall not bind the dioceses further than they may have already bound, or may hereafter bind, themselves by their respective conventions.

Signed at the Lookout Mountain near Chattanooga, this 6th day of July, A. D. 1857.

JAMES L. OTEY,
Bishop of Tennessee.
LEONIDAS POLK,
Bishop of Louisiana.
STEPHEN ELLIOTT,
Bishop of Georgia.
N. H. COBBS,
Bishop of Alabama.
W. M. GREEN,
Bishop of Mississippi.
FRANCIS B. RUTLEDGE,
Bishop of Florida.
THOS. F. DAVIS,
Bishop of South Carolina.
DAVID PISE,
FRANCIS B. FOGG,
JOHN ARMFIELD,
Tennessee.
W. T. LEACOCK,
GEO. S. GUION,
Louisiana.
HENRY C. LAY,
CHAS. T. POLLARD,
L. H. ANDERSON,
Alabama.
W. W. LORD, *Mississippi.*
ALEX. CRAIG, *South Carolina.*
M. A. CURTIS,
W. D. WARREN,
North Carolina.

9. If the scope, plan and purpose was otherwise declared at the convention and you have a copy set it out in your answer, and say how and by whom they were declared.

(Excepted to as above.)

A. To the ninth interrogatory witness saith:

The scope, plan and purpose of said university was also declared at that convention in an address publicly made by Rt. Rev. James H. Otey, D. D. Bishop of Tennessee, on the subject of the proposed Southern University, delivered at the request of the Bishops associated in the enterprise, and published at the unanimous call of the convention, and from the official published copy of said address, incorporated with the proceedings of said convention, pages 31 and 32, I copy as follows:

"It is designed to found an institution on the most enlarged and liberal scale; to engage in its service the best talents; the most erudite learning and the largest skill and experience which ample compensation and hope of useful*ness* can command; to make its departments commensurate with the wants and improvements
98 of the age, in every field of scientific investigation and of discovery *on* the arts. Its advantages are to be offered to all, without regard to denominational differences, who acknowledge the commonly recognized truths and obligations of christianity."

10. In the declaration of principles $500,000. is shown to be the minimum amount to be subscribed before the development of the university should be attempted, now say, if you know, the amount it was then intended and expected should be the capital stock of the university and say how you know the fact?

(Excepted to as irrelevant.)

A. To the tenth interrogatory witness saith:

The third clause of the Declaration of Principles adopted by the convention, set forth on the 22nd page of the proceedings, declares that "This University shall not be put into operation until the sum of at least five hundred thousand dollars be actually secured." The amount of capital, however, expected and intended to be secured and which, in the opinion of those who inaugurated the University, ought to be the capital of the proposed University, was not less than three millions of dollars. I *know* the fact from conversations with the trustees and from a statement made by Bishop Otey, who was the President of the convention held at Lookout Mountain, Tennessee, July 4th, 1857, in his published address delivered on that occasion. In the first paragraph, on page 33, Bishop Otey says in his sermon, that $3,000,000. was the intended capital and the convention had his sermon published as a part of its proceedings.

11. State, if you know, what steps were taken by the committee upon location, as to the point to be selected, and if you say they selected an engineer to examine the points supposed to be most eligible, state what engineer was selected, when he was selected, and how he was selected, and the particular points he was directed to inspect and

report upon, and you will say whether Tennessee was among the sites he was directed to examine and report upon?

(Excepted to as irrelevant.)

A. To the eleve-*ht* interrogatory witness saith:

That the committee on location appointed by the convention on Lookout Mountain, on July 4th, 1857, to collect information on the subject of location of the proposed university, organized a scientific commission to examine such sites as had been or should be presented and had the strongest claims to consideration. The com-
99 missioner selected by them for this purpose was Col. Walter S. Gwynn, a gentleman of high character and eminent scientific attainments. The points he was directed to examine were such as the authorities of the towns of Knoxville, Chattanooga, and McMinnville, Tennessee, Atlanta, Georgia, Huntsville, Alabama, might indicate near their respective corporate limits. He was also instructed to add Cleveland and the Sewanee Mountain to the list of places to be examined.

Sewanee was one of the places designated for examination and was one of the places examined and reported upon. A series of inquiries, eighteen in number, was prepared by the committee on location, to be answered by the committee, bearing upon the suitableness and advantages afforded as the site for the proposed university, by the respective localities which might be examined by the commission.

12. What *preparation* did Huntsville, Alabama, make if the university was located there?

(Excepted to as irrelevant.)

A. To the 12th interrogatory witness saith:

Huntsville, Alabama, through the Hon. C. C. Clay, who appeared before the committee as a delegate from that city, pledged to the Board of Trustees from the citizens of that place, one hundred thousand dollars as its subscription in money, if the university shfuld be placed there, as will be seen by the published report of the proceedings of the Board of Trustees of the University, held at Montgomery, Alabama, Nov. 25th, 1857, page 14.

13. State all the points in Georgia, Alabama, and Mississippi, urged upon the committee and Board of Trustees as suitable points for the location of the university?

(Excepted to as irrelevant.)

A. To the 13th direct interrogatory, witness saith:

The following places in the State of Georgia were urged upon the Committee of Location as suitable points for the location of the university, as appears by the report of said commission to be found — pages 16 and 17 of the proceedings of the Board of Trustees, at Montgomery, Nov. 25th, 1857, to-wit: Atlanta, Gordon Springs, Dalton, and Griffin, also Huntsville, and Jacksonville, Alabama, and Corinth, Mississippi.

14. When and how did Sewanee happen to be added to the points to be examined as an eligible site?

A. To the 14th direct interrogatory witness saith:

That in an interview of Bishop Polk, the chairman of the committee on location, with Col. Gwynn, the commissioner on location, held at Huntsville, Alabama, as reported by Col. Gwynn, proceedings at Montgomery, p. 20, it was decided to add Sewanee Mountain to the list of "localities presented as eligible sites for the university."

100

15. State when the adjourned — to be held in Montgomery, Alabama, was convened, and give the names of all the members?

(Excepted to as irrelevant.)

A. To the 15th direct interrogatory witness saith:

The adjourned meeting of the trustees of the university was convened at Montgomery, Alabama, on the 25th day of November, 1857. There were present as the published journal of the meeting shows the following members: viz: of the bishops, Rt. Rev. James H. Otey, D.D., Rt. Rev. N. H. Cobbs, D.D., Rt. Rev. W. M. Green, D.D., Rt. Rev. Leonidas Polk, D.D., Rt. Rev. Stephen D. Elliott, D.D., Rt. Rev. F. H. Rutledge, D.D., Rt. Rev. Thos. Atkinson, D.D., Of the clerical and lay delegates, North Carolina, Rev. M. A. Curtis, D.D., Mr. Thos. D. Warren; South Carolina, Rev. Alexander Gregg; Alabama, Rev. Henry C. Lay, D.D., Mr. T. C. Pollard, Mr. L. Anderson; Texas, Rev. J. W. Dunn; Tennessee Rev. David Pise, D.D., Mr. F. B. Fogg; Florida, Rev. J. J. Scott, D.D., Mr. Geo. R. Fqirbanks, Mr. Geo. Whitfield.

16. If you have before you the official report of the proceedings of that meeting, copy from it such part of it as relates to the charter of the university, and the action upon the question of location and make them parts of your answer?

(Excepted to as irrelevant.)

A. To the 16th interrogatory direct, witness saith:

I have before me the official report of the proceedings of that meeting referred to in the answer to the fifteenth interrogatory, and I append to this my answer copies of such portions of the proceedings as relate to the charter of the university, and the action upon the question of the location, as parts of this my answer, to-wit:

"Mr. Fogg, from the committee on a charter, presented a draft of a proposed act of incorporation; and, on motion of Bishop Elliott, it was resolved, that a committee be appointed to consider and report upon the draft presented; and that said committee consist of two of each order, with the addition of Mr. Fogg. The following were appointed on said committee: Rt. Rev. Bishop Elliott, Rt. Rev. Bishop Atkinson, Rev. Wm. Curtis, Rev. Dr. Leacock, Mr. Fairbanks, Mr. Pollard, Mr. Fogg.

The Rev. Henry C. Lay offered the following resolution: Resolved, That Huntsville, Alabama, be selected for the site of the proposed university. Bishop Otey moved to amend by striking out the word, "Huntsville" and inserting the words, "the vicinity of McMinnville, Tenn." Presently said amendment was withdrawn. The Rev. Dr. Curtis moved to amend by striking

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out as before and inserting, "the vicinity of Chattanooga." On motion the convention took a recess until 4 p. m. On reassembling, the amendment of Dr. Curtis was withdrawn. Mr. Anderson moved to amend by striking out the above and inserting, "the vicinity of Cleveland." On motion the convention adjourned to meet to-morrow at 9 a. m.

Third Day.

The convention met pursuant to adjournment and prayers were offered by the President. The roll was called, the members were found to be present as on yesterday. The minutes were read and adopted. The question of location recurring, Mr. Anderson withdrew his amendment to the resolution under discussion. Mr. Bishop Polk moved to amend by striking out as before and inserting "Sewanee." Presently this amendment, as the others preceding it, being offered for the purpose of eliciting information, was withdrawn by the mover. Pending the discussion of these amendments, sundry persons were questioned as to the peculiarities of the several sites proposed. In behalf of Huntsville, representations were made by the Rev. Henry C. Lay, D.D., and Gen. L. P. Walker, McMinnville, Bishop Otey, Bishop Polk, and H. H. Harrison, Esq. For the mountains near Chattanooga, Bishop Elliott, and Rev. J. W. Dunn. Cleveland, Rev. Mr. Gay, Mr. Anderson, T. H. Gallaway, and A. Fitzgerald. Atlanta, Bishop Elliott, and Rev. R. Johnson. Sewanee, Bishop Polk, Col. W. Britton, and President Carnes, of Burritt College. On motion the convention took a recess until 4 p. m. On reassembling, the resolution offered by the Rev. Dr. Lay, on yesterday, being under consideration, Mr. C. T. Pollard offered the following substitute which was accepted by the mover, with the consent of the House: "Resolved, That all the localities proposed may be put in nomination, and the vote shall be taken by ballot, the place receiving two-thirds of the votes of each order shall stand as the choice of this house, which resolution was adopted. Before a ballot was had, on motion, the convention adjourned until to-morrow at nine a. m.

Fourth Day.

The convention met pursuant to adjournment and prayers were offered by the Rt. Rev. President. The minutes were read and after amendment, were adopted. The subject under discussion was resumed. On motion of Mr. C. T. Pollard, the following resolutions were adopted: Resolved, That the convention do now proceed to ballot for a location; and in accordance with the declaration of
102 principles adopted — our government, the orders now divide and that the president appoint a teller for each order, to receive the ballot and report the result. Bishop Atkinson and Rev. Dr. Lay were appointed tellers. On motion of the Rev. Dr. Dunn, it was resolved, That the vote be taken by dioceses. At the suggestion of the Rt. Rev. Bishop Green, it was announced from the chair that before taking a vote, silence would be kept for a space, in order that the delegates might secretly, in their prayers, make their humble

supplication to Almighty God, for his gracious guidance and assistance in the matters to be determined. A ballot was then taken and the tellers reported the following result:

Of the bishops (five votes being necessary to a choice).

Atlanta, 2; Huntsville, 1; McMinnville, 1.

Lookout, 2; Sewanee, 1.

Of the clergy and laity, (Voting by dioceses, five votes being necessary to a choice).

Atlanta, 2; Lookout, 2; Huntsville, 1; Sewanee, 2.

There being no selection balloting was proceeded with, seven ballots in all having been taken without a choice. On motion, the convention took a recess until 4 p. m. On reassembling, the balloting was re sumed, Bishop Atkinson and the Rev. Dr. Pise, acting as tellers. Four additional ballots were then taken without a choice, when Bishop Elliott moved "That the election be postponed to a meeting to be held at —— on the — day of ——. After some conversation, this motion was withdrawn, and the ball-tting resumed. The seventeenth ballot resulted as follows:

Of the bishops, Sewanee, 5; Atlanta, 2.

Of the clerical and lay trustees, Sewanee, 4; Huntsville, 2; Atlanta, 1. At this point the Rev. Dr. Curtis offered a resolution, which, as subsequently modified, reads as follows:

Resolved, That "Sewanee" be selected as the site of the proposed university, provided, that satisfactory arrangements can be made by a committee, composed of Bishop Polk, Bishop Elliott, and F. B. Fogg, Esq., with the proprietors of the property; and provided also that an act of incorporation acceptible to this Board can be obtained from the Legislature of Tennessee. This resolution was adopted, *nem. con.* Bishop Elliott from the committee of charter, presented the following report:

The committee to whom was referred the charter for the pr-posed university prepared by the committee appointed at the meeting of the Board held at Lookout Mountain, in July last, begs leave to report, That they have carefully examined the charter submitted to them, have amended it in some immaterial particulars, and
103 now recommend its adoption by the Board.

The Committee would bring to the notice of the Board, that there is a blank in the charter which cannot be filled until the board shall have determined the name of the proposed university. So soon as this blank shall have been filled, the charter will be ready and complete to be submitted to the proper legislative body.

STEPHEN ELLIOTT.

The charter thus proposed being under consideration, Mr. Fairbanks moved to fill the blank, referred to by the committee with the words: "The Church University."

Bishop Atkinson moved the amendment of this by inserting the words "The University of Sewanee."

This amendment did not prevail. The amendment of the Rev. Mr. Dunn was also lost; the original resolution was then adopted and

the blank reserved for the name of the university was filled with the words, "University of the South."

The proposed charter was then read by sections and adopted without material alteration.

Mr. Fogg moved that a committee of two persons be appointed to procure a charter from the legislature of Tennessee. The resolution was adopted. F. B. Fogg, Esq., and Russell Houston, Esq., (the latter not of this Board), were appointed said committee; and requested to act on behalf of the convention.

17. Copy as a part of your answer the two concluding resolutions of said meeting?

(Excepted to as irrelevant.)

A. To the seventeenth direct interrogatory witness saith:

I herewith copy as a part of this my answer the following resolution passed by said meeting of trustees, being on page 10 of the official record of such meeting, to-wit:

Resolved, That when this convention shall finish its present session, it shall stand adjourned subject to the call of the president at such time and place as he may elect.

On motion of Bishop Elliott it was

Resolved, That the secretary be directed to publish for the use of the Board two thousand copies of the proceedings, or an abstract from them, together with the reports of the committees on location and of the engineers.

In the exercize of the discretion here given him the secre-
104 tary has transcribed the journal exactly, omitting only the details of the ballots.

18. If you have before you the official report of the next me-ting, state when and where it was held and give the names of the members?

A. To the eighteenth direct interrogatory witness saith:

I have before me the official record of the proceedings of said trustees of said university held at Beersheba Springs, Tennessee, on the 4th day of July, 1858. The names of the members as recorded being present are:

Of the Episcopal Order:

Rt. Rev. James H. Otey, D.D., Rt. Rev. Stephen Elliott, D.D., Rt. Rev. Leonidas Polk, D.D., Rt. Rev. Wm. M. Green, D.D., Rt. Rev. Francis H. Rutledge, D.D., Rt. Rev. N. H. Cobbs, D.D.;

Of the Clerical and Lay Trustees:

South Carolina, Rev. Alex. Gregg, Messrs. J. A. Calhoun, and E. E. Evans; Georgia, Mr. Daniel Griffin; Alabama, Rev. Henry C. Lay, D.D.; Mississippi, Rev. Wm. Stout; Tennessee, Rev. David Pise, D.D., Messrs. F. B. Fogg, John Armfield; Florida, Rev. J. J. Scott, D.D., Geo. R. Fairbanks; Louisiana, Rev. W. T. Leacock, D.D.

19. Copy as a part of your answer the notice of said meeting?

(Excepted to as irrelevant.)

A. To the nineteenth direct interrogatory witness saith:

I here append as my answer to the interrogatory a copy of the notice given for such meeting by the Rt. Rev. James H. Otey, President of the Board in the following words, "To the Trustees of the University of the South in the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Tennessee, by virtue of the authority vested in me by a resolution passed in a convention of the Board of Trustees of the University of the South, at Montgomery, Alabama, on the 28th of November, 1858, I hereby give notice that a meeting of said Board of Trustees is called at Beersheba, Grundy County, State of Tennessee, on Saturday, the 3d day of July of the present year, 1858. And I hereby give information to all whom it may concern, that this convention of trustees, at the time and place above mentioned, is summoned for the purpose of acting on the question of accepting the charter, or act of the legislature of Tennessee, at its late session, incorporation the University of the South, for taking such measures as the act of incorporation requires, for organizing the institution and forming a constitution for its government and for all other purposes which may be deemed necessary or expedient, upon consultation, for the vigorous and successful prosecution of the work committed to them.

105 JAMES H. OTEY.

20. State whether or not the charter which had been prepared, reported and approved at the meeting at Montgomery had then been granted by the State of Tennessee and if you answer that it had, say whether the charter was rep-rted at that meeting, and, if so, copy that report as a part of your answer?

(Objected to as irrelevant.)

A. To the t-entieth direct interrogatory witness saith:

The charter which had been prepared, reported and approved at the meeting of the trustees at Montgomery, November 25th, 1857, had been granted by the State of Tennessee prior to the meeting at Beersheba Springs, Tennessee, on July 4th, 1858, and was reported to that meeting, as will apsear by the record of such proceedings in the following words, page 7 proceedings of 1859, to-wit:

"Mr. Fogg from the committee on charter reported that an act of incorporation had been obtained from the legislature of Tennessee and laid a copy of the same on the secretary's table, which copy is on file."

21. State whether there was a formal acceptance of said charter and an organization at that meeting under it, and, if so, copy as a part of your answer that part of the proceedings?

A. (Objected to because irrelevant.)

A. To the twenty-first direct interrogatory witness saith:

There was a formal acceptance of said charter and an organization at that meeting under it. I herewith append as a part of my answer the official record of the proceedings had by said trustees in reference

thereto as contained on pages 13 and 14 of the official printed report, viz:

The Rt. Rev. Bishop Polk, seconded by the Rt. Rev. Bishop Cobbs, offered the following resolution, which was unanimously adopted:

"Resolved, That the Board of Trustees of the University of the South, being by a public act of the Legislature of the State of Tennessee, passed 6th of January, 1858, created a body corporate and politic in law, hereby accepts all the rights and privileges which are guaranteed by said act and assumes the obligations imposed by the same."

Subsequently, the Rt. Rev. Bishop Polk moved to reconsider this resolution, which motion prevailed.

A call of the house was ordered and the roll being called, all the members heretofore present, eighteen in number, answered to their names.

The vote upon the resolution accepting the charter was taken by ayes and noes, wih the following result:

106 Ayes: Rt. Rev. James H. Otey, D. D., Rt. Rev. Leonidas P-lk, D. D., Rt. Rev. Stephen Elliott, D. D., Rt. Rev. N. H. Cobbs, D. D., Rt. Rev. W. M. Green, D. D., Rt. Rev. F. H. Rutledge, D. D.; Rev. Alex. Gregg, Rev. J. J. Scott, D. D., Rev. H. C. Lay, D. D., Mr. W. C. Stout, Rev. W. T. Leacock, D. D., Rev. David Pise, D. D.; Messrs. J. A. Calhoun, E. E. Evans, Daniel Griffin, G. R. Fairbanks, F. B. Fogg, John Armfield, 18.

Whereupon it was announced by the chair that the resolution was adopted and the charter accepted by unanimous vote of a majority of the whole number of trustees.

The Board then proceeded to organize under the charter."

22. State when and where the next meeting of the Board of Trustees was held?

(Excepted to as irrelevant.)

A. To the twenty-second interrogatory witness answers:

The next meeting was held of the Board of Trusees of the University of the South at Beersheba, Tennessee, on the 10th day of August, 1859.

23. If you have before you the official report made by the commissioners appointed to raise the endowment fund make a copy of it a part of your answer?

(Excepted to as irrelevant.)

A. To the twenty-third direct interrogatory witness saith:

I have before me the report made by the commissioners appointed to raise the endowment fund, made at said meeting of the trustees in 1859 and embody a copy of the same from the official report of proceedings in the following:

Report of General Commissioners.

The commissioners appointed to collect the endowment of the University of the South, beg leave to report:

That they have given as much time as could be spared from their parishes and dioceses to the work assigned them, and have met the heartiest response from that portion of the country which they have been able to visit. The collections have been confined almost entirely to Louisiana, in consequence of having begun our work at New Orleans. The two or three months which we found it possible to give to this duty were fully occupied in the field upon which we entered, nor did we by any means exhaust that. While the sums required for the commencement of operations could have been easily secured by skimming the surface of the associated dioceses, the large endowment we propose to raise requires a careful *a careful* and special canvassing of each particular diocese. To do this requires
107 time. From the intelligent appre*ictai*on of our purposes and the generous liberality which have met us everywhere, we feel authorized to say to the Board that we consider the endowment of the University as secured beyond question.

The amount we have received in cash, bonds and notes, payable in available periods, is $363,580. Besides this we have pledged from entirely reliable parties to be fulfilled within a short period about $115,000. But as these pledges have not yet been secured by bonds or notes, we have not included them in the amount reported.

All which is respectfully submitted.

LEONIDAS POLK.
STEPHEN ELLIOTT.

Beersheba, August 12th, 1859.

24. What steps if any were taken at that meeting to have an amendment to the charter and you will make a copy a part of your answer?

(Objected to as irrelevant.)

A. To the 24th direct interrogatory witnes- saith:

That at such meetings of the Trustees of the University in 1859, a resolution was passed in reference to procuring an amendment to the charter and which resolution I copy from the official report of proceedings of said trustees and make a part of my answer and which is in the following words:

"On motion of Mr. Fairbanks, it was

"Resolved, That the committee ap-ointed to receive conveyance of lands be authorized to procure from the Legislature of Tennessee such amendments to the charter of the University as may enable the University to receive donations of land, additional to the ten thousand acres alre*q*dy authorized."

25. When was such amendment accepted if at all, and y-u will copy so much of the proceedings as shows the acceptance of it?

A. To the twenty-fifth interrogatory witness saith:

An amendment to the charter was made by the legislature of Tennessee on the 19th day of January, 185- and such amendment was reported to the Board of Trustees at a meeting of the Board held at New Orleans on February 8th, 1860, and was duly accepted by such Board at such meeting as will appear by the official report of proceedings, a copy of such portion as relates thereto I herewith embrace and make a part of my answer in the following words:

Amendment to Charter.

108 Mr. B. F. Fogg laid before the Board an act of the General Assembly of the State of Tennessee, to-wit:

An Act to amend an Act of January 6th, 1858, Chapter 29 of the private laws, entitled "An Act to establish the University of the South."

It was read by the secretary and on motion of Mr. Fairbanks accepted as an amendment of the charter.

26. If — that meeting a report was made on the constitution and statutes make a copy of it as a part of your answer?

(Excepted to as irrelevant.)

A. To the twenty-sixth interrogatory direct witness saith:

That there was a report made at such meeting held at New Orleans on February 8th, 1860, by the committee of constitution and statutes and which report I copy from the official report of proceedings at such meeting and make a part of my answer, to-wit:

"The Rt. Rev. Dr. Polk, chairman of the committee to prepare a constitution and code of statutes presented the following report:

The committee appointed to draft a constitution and code of statutes for the organization and government of the University of the South beg leave to report:

"That, impressed with the importance of the duty assigned them they have proceeded to its discharge with caution and mature deliberation.

"In founding an institution of such magnitude, embracing a scope of action and influence so extensive and taking such wide range of subjects of instruction, we should have been inexcusable if we had not availed ourselves of the experience of those who had preceded us in the same field.

Our first work, therefore, was to obtain possession of the program and examine the workings machinery of the most eminent institutions of learning in our country and in Europe. In the accomplishment of this purpose, so far as Europe was concerned, we take pleasure in saying that we have had the most liberal co-operation of and aid of our national government. In reply to our request, the President of the United States put us in communication, through our foreign embassies, with the highest sources of information in England, France and the German States, and facilitated our obtaining all the information we desired.

By this means all the most important and valuable publications of these states on the subject of education in the highest walks of hu-

man learning and its widest range of topic were placed at our disposal. To these were added the systems adopted and pursued
109 in the best institutions in our own country.

From a careful investigation and comparison of this mass of matter, which was increased by memoirs, more or less full, furnished by private individuals in this country and Europe, and from personal inspection and examination by members of the committee, of the practical working of the most distinguished American colleges and universities, the committee have obtained views which they have wrought into the constitution and statutes they herewith submit.

It will be perceived that the plan of organization they offer follows entirely no existing system. It is eclectic. It embraces features which are found in the most distingui-hed universities of Europe, features which, while they form parts of systems, otherwise widely different, combine harmoniously, and form an aggregate of all that a University in its largest sense should be expected to supply.

The work of the committee has been one of great labor and they have felt it to be one of great responsibility. They have endeavored to bring to its performance all the information and all the ability they could command. They believe, that, in view of the large amount of resources to which they have had access, whether printed, written, or oral, and the time and care they have devoted to their consideration, they can, with confidence, present to the Board the accompanying plan of organization and recommend its adoption.

LEONIDAS POLK, *Louisiana.*
FRANCIS B. RUTLEDGE, *Florida.*
DAVID PISE, *Tennessee.*
JAMES HAMILTON COUPER, *Georgia.*
STEPHEN ELLIOTT, *Georgia.*
HENRY C. LAY, *Arkansas.*
GEORGE R. FAIRBANKS, *Florida.*
FRANCIS B. FOGG, *Tennessee.*

New Orleans, February 8th, 1860.

27. When and how were the first steps taken looking to the lease of the lands of the university, and will you make a copy of such part of the proceedings a part of your answer?

(Objected to as irrelevant.)

A. To the twenty-seventh direct interrogatory witness saith:

That the first step with reference to leasing the lands of the university was taken at the same meet/ing at New Orleans, on February 8th, 1860, by/ the passage of the following resolution, which I copy from the official report of the proceedings/m and make a part of my answer: to wit:

"On motion of Rev. Dr. Polk, it was resolved that the executive committee be authorized to take such steps as they may deem necessary to place such lands on the university domain, as are not
110 required for university purposes, under lease as soon as the necessary partition and surveys now being made are completed."

28. When was the next meeting of the Board held and what was done at that meeting with respect to laying out and providing for the lease of the lands of the university?

A. To the twenty-eighth direct interrogatory witness saith:

The next meeting of the Board of Trustees of said University was held at Sewanee, Franklin County, Tennessee, on the ninth day of October, 1860. At the meeting a resolution was passed, with reference to leases on the domain, as follows, which I make a part of my answer to the interrogatory: Resolved, That the executive committee be authorized to arrange the reservation required for the use of the university and around the springs and also lay out the public grounds, avenues, streets, etc., and shall give two-months' notice before the first of June next, or as soon thereafter as may be practicable, for leasing the lots on the domain. The size and shape of the lots and the terms, conditions and mode of leasing thereof shall be determined by the executive committee, who shall have full discretionary power in reference to all matters connected therewith."

29. State whether at the meeting of October, 1860, the constitution and statutes of the university were adopted, and, if so, copy as a part of your answer so much thereof as shows the number and character of schools designed?

A. To the twenty-ninth direct interrogatory witness saith:

The constitution and statutes were adopted at the meeting of the Trustees, October 9th, 1860, at Sewanee, Tennessee, and I copy from the official report of proceedings, of said meeting, and make part of this my answer. Statute Sixth, establishing and setting forth the schools founded and intended to be put into operation by said university.

6. Schools.

The following shall be the schools founded by the University, so soon as the means at its command shall be sufficient for that purpose. The grouping of the topics shall be varied at the pleasure of the Board — Trustees. The number of schools shall be increased as expediency and the progress of Letters, Sciences and Art shall suggest:

1. School of Greek, Language and Literature;
2. School of Latin, Language and Literature;
3. School of Mathematics;
4. School of Physics;
111 5. School of Metaphysics;
6. School of History and Archeology;
7. School of Natural Sciences, with Cabinets, and Gardens of Plants, attached;
8. School of Geology, Mineralogy, and Paleontology;
9. School of Civil Engineering, Construction, Architecture, & Drawing;
10. School of Theoretical and Experimental Chemistry;
11. School of Chemistry applied to Agriculture, and Farm attached;
12. School of Moral Science and the Evidences of the Christian Religion;

14. School of English Language and Literature;
15. School of French Language and Literature;
16. School of German Language and Literature;
17. School of Spanish Language and Literature;
18. School of Italian Language and Literature;
19. School of Oriental Languages and Literature;
20. School of the Philosophy of Language;
21. School of the Philosophy of Education;
22. School of Rhetoric, Criticism, Elocution and Composition;
23. School of American History and Antiquities;
24. School of Ethnology and Universal Geography;
25. School of Astronomy (With Observatory) and Physical Geography;
26. School of Political Science, Political Economy, Statistics, Law of Nations, Spirit of the Laws, General Principles of Government and Constitution of the United States;
27. School of Commerce and Trade, including the History and Laws of Banking, Exchange, Insurance, Brokerage, and Bookkeeping;
28. School of Theology;
29. School of Law;
30. School of Medicine;
31. School of Mines and Mining;
32. School of Fine Arts, including Sacred Music.

The organization of the schools of theology, law, medicine, and of practical agriculture, shall be determined by the Board of Trustees at the time of their establishment.

30. When was the corner stone of the university laid? What work was done in the university grounds before the war?

A. To the thirtieth direct interrogatory witness saith:

The corner stone of what was designated to be the principal building of the university was laid at Sewanee, Tennessee, on the 10th day of October, 1860. A drive of several miles was laid out and opened, hillsides graded and bridges put in, a mile turnpike graded as the commencement of a turnpike at Winchester. Lines of levels of 10 and 20 feet apart run on several thousand acres of the domain
112 and carefully marked, some temporary buildings erected for the accommodation of the trustees and others, sheds for workmen, etc. Also a careful laying out of the avenues and location of college sites, by a distinguished gentleman employed for that purpose.

31. What steps were taken by the Board with respect to leasing the lands of the university in 1861?

A. To the thirty-first direct interrogatory witness saith:

At the meeting of the Board of Trustees held at Columbia, South Carolina, October 15th, 1861, as is shown by the proceedings page 11, the following resolution was passed which I make part of my answer, to wit: "Resolved, That the executive committee be authorized to arrange the reservation required for the use of the university and around the springs and also to lay out public grounds, avenues, and streets, etc., and to give two months' notice of the time of leasing the

lots on the domain, the size and shape of the lots and the terms, conditions, and mode of leasing thereof shall be determined by the executive committee, who shall have full discretionary powers in referen-e to all matters connected therewith."

32. Who laid out and mapped the university grounds and when?

A. To the thirty-second direct interrogatory witness saith:

At the meeting of the Board of Trustees at Beersheba, Tennessee, July 4th, 1858, on motion of the Rt. Rev. Bishop Polk, Col. Charles R. Barney was appointed surveyor to make the necessary surveys of the land. Col. Barney was employed in such service during all the ensuing year, and his accounts were paid in 1859. At a meeting of the Board of Trustees at Beersheba Springs, Tennessee, August 10th, 1859, on motion of Mr. Fairbanks, it was ordered that C. R. Barney be appointed engineer and surveyor for the ensuing year; and his salary was fixed at two thou-and dollars per year. At the meeting of the Board of Trustees at Sewanee, Tennessee, October 9th, 1860, on motion it was

Resolved, That Col. Barney be continued as engineer of the university with the same compensation as heretofore allowed. Col. Barney, the engineer referred to, with several engineering parties, was engaged over two years in the work of surveying the lands of the university, pr*a*paring an elaborate topographical map of the same and preparing the lands for the building of the university, and for lea-ing under the direction of the executive committee. During the winter of 1859, and 1860, Rt. Rev. J. H. Hopkins, Bishop of Vermont, was engaged in planning the location of the intended college buildings and as a landscape *grad*-ner, in laying out *out* the grounds.

113 33. State whether all efforts to establish the university were suspended during the war and what became of the improvements made? Were they destroyed, or not, during the war? What did they cost? What other amount had been paid for roads, surveys made, etc.?

A. To the thirty-third direct interrogatory witness saith:

All efforts to establish the university were suspended during the war; buildings which had been erected were destroyed, the corner stone was broken to fragments, the private residences of Bishop- Polk and Elliott and Mr. Fairbanks were burned and everything went to ruin. The buildings which had been put up by the university cost about three thousand dollars. The private residences of Bishops Polk and Elliott and Mr. Fairbanks about $5,000. There were paid -ut *out* for roads, surveys, maps etc. about $9,000.

34. When and where was the first meeting of the Board after the war?

A. To the thirty-fourth direct interrogatory witness saith:

The first meeting of the trustees after the war was held at Sewanee, in October, 1866, but no quorum was present. A meeting was called and held at Montgomery, Alabama, on the 13th of February, 1867, of the Board of trustees.

35. How much money was paid out before the war and how much since the war to obtain the title to its lands?

(Excepted to as irrelevant.)

A. To the thirty-fifth direct interrogatory witness saith:

The sum of four thousand five hundred dollars was paid before the war to obtain titles to land and the university has paid out about three thousand and four hundred dollars since the war in obtaining titles.

36. What was the condition of the university at the close of the war?

(Excepted to as irrelevant.)

A. To the thirty-sixth direct interrogatory witness saith:

The close of the war found our buildings burnt to the ground, our corner stone broken into fragments, and four of our bishops had died, among whom was the president of the board, Bishop Otey of Tennessee, and Bishop Polk, the leader and projector of the university, and Bishop Cobbs of Alabama, and Bishop Rutledge of Florida, both of whom were in warm sympathy with the work. A blank of five years, during which it was impossible to do anything, and a great body of the members of the church at the South on whom we relied for aid, impoverished and bankrupt.

37. At the time the meeting of the Board was held in 1867,
114 what had been done towards establishing the university after the war?

A. To the thirty-seventh direct interrogatory witness saith:

The special convention of the diocese of Tennessee, in October, 1866, took the first steps to-ards resuscitating the enterprise by the appointment of a committee to take measures for establishing with the concurrence of the executive committee of the Board of Trustees of the university, a Training and Theological school at the site of the university. In March, 1866, the bishop of Tennessee planted a cross upon the site of the Chapel of the Mission, and in May of the same year, a building was put up for the purpose of a Training School, by the designation of Otey Hall. The funds for the erection of which were provided by collections obtained in Maryland and the northern states by the bishop of Tennessee. During the summer of 1866, Bishop Quintard of Tennessee and witness erected residences near Otey Hall and removed our families to Sewanee. Bishop Elliott, who had succeeded Bishop Polk as Chancellor, called a meeting of the Board to meet at Sewanee on October 11th, 1866, only seven trustees out of forty attending and ther- was, consequently no quorum; but those who attended, after due consideration, unanimously determined that the work of establishing the university, should be prosecuted. The death of Bishop Elliott occurred in December, 1866, and Bishop Green became Chancellor, who called a meeting of the trustees, to be held at Montgomery, Alabama, in February, 1867. At that meeting it was determined to establish, as early as possible, a high school of a high order, as an in-tiary step and beginning of the university, and the Bishop of Tennessee was appointed commissioner to solicit funds for that purpose. Witness was at the same time appointed Commissioner of Buildings and Lands, to reside at and take the general supervision of affairs at Sewanee, the site of the university. In pursuance of this appointment, Bishop Quintard of Tennessee, visited

Louisville, Savannah, Augusta, Ga., and other places *adb* received substantial aid. Bishop Quintard turned over Otey Hall to the university at Montgomery for university purposes. It was a plain wooden building, costing about $2500.

38. What amount was realized from the subscriptions made before the war and when realized?

(Excepted to as irrelevant.)

A. To the thirty-eighth direct interrogatory witness saith:

At the time of th- meeting of the Board at Sewanee, in August, 1867, I do not think anything had been realized after the war, of the subscription made before the war.

115 39. At the meeting of the Board in August, 1867, what was the pecuniary condition of the people of the south?

(Excepted to as irrelevant.)

A. To the thirty ninth direct interrogatory witness saith:

At the time the trustees held their meeting at Sewanee, in August, 1867, the pecuniary condition of the people of the South was very poor.

40. What steps were taken at the meeting of August, 1867, to raise money in England, and you will copy so much of the proceedings of that meeting as may show what was done?

(Excepted to as irrelevant.)

A. To the fortieth direct interrogatory witness saith:

There were steps taken at the meeting of the Board of Trustees, in August, 1867, to raise money in England for the university, and I copy from the official record of the proceedings of the Board of that meeting, the following action, which I make part of this my answer:

The Bishop of Tennessee offered the following preamble and resolutions, which were adopted:

Whereas the Church of England laid the first foundation of the church of Christ in America, and through her nursing, care and protection, was instrumental in furthering the work of Christ and the Church in the older states of America; and

Whereas, the approaching counsil of bishops in visible communion, with the English Church, has for its object, in an especial manner, the promotion of the missionary work of the church; therefore,

Resolved, That the Chancellor of the University of the South be requested to address them a statement and appeal to the Most Reverend the Arch-Bishop, and the Right Reverend Bishops of the Church of England, setting forth the lamentable condition of *of* the church in the southern dioceses, the history and vast importance of our enterprise, and ask their co-operation in carrying forward the work.

Resolved, That this address shall be sent through the Vice-Chancellor, who shall be authorized and requested from the presiding Bishop of *of* the Church of the United States, his counsel, advice and co-operation in the presentation of the address, and in presenting the claims of the university to the bishops, clergy and laity of the Church of England.

41. From first to last about how much was secured by Bishop Quintard from England?

(Excepted to as irrelevant.)

A. To the forty-first direct interrogatory witness saith:

116 From first to last about $36,000, were secured from England thro' the efforts of Bishop Quintard, besides gifts to the value of several thousand dollars in books for the library, some of great costliness and value, silver communion set, and furniture for the chapel.

42. When was the university opened and how?

(Excepted to as irrelevant.)

A. To the forty-second direct interrogatory witness saith:

The university was first opened on the 18th day of September, A. D., 1868, pursuant to a resolution of the Board of Trustees, passed at a meeting held at Savannah, Georgia, on the 1st day of April, 1868, which was as follows:

"Resolved, That for the purpose of in-tiating operations under the charter of the University of the South, the Board will open the junior department at University Place not later than September first, 1868."

43. What money did the university then have?

(Excepted to as irrelevant.)

A. To the forty-third direct interrogatory witness saith:

Witness is unable to state what money the university had, but knows that it did not exceed a few hundred dollars over and above money raised by Bishop Quintard in England, which had then begun to be received and was being expended on buildings to enable the university to start.

44. What scheme was adopted at the meeting of the Board in August, 1868, to raise funds? Make a copy a part of your answer?

(Excepted to as irrelevant.)

A. To the forty-fourth direct interrogatory witness saith:

The Board of Trustees at their meeting held at Sewanee on the 12th of August, 1868, adopted certain measures to procure funds for advancing the interests and supplying the wants of the university, which are set forth in the following action of the Board, which I copy from the official report of proceedings and make a part of this my answer:

Thursday, August 13th.

After prayers by the Chancellor, the Board was called to order. The minutes of yesterday were read and approved. On motion of the Bishop of Tennessee, the following preamble and resolutions were unanimously adopted:

Whereas, The interests of the university would be largely promoted by diff/sing information respecting it, from time to time, as widely as possible throughout the dioceses immediately interested, by adopting

some systematic plan of raising funds to aid for years to come,
117 in its development and support, therefore,

Resolved, That the executive committee shall immediately after each annual meeting, prepare a statement of the condition and claims of the university, with an appeal in its behalf to be published in the church papers and leading secular journals in the South. And, the bishops approving, that the clergy be earnestly requested to read the same to their respective congregations, commending the same to their respective congregations, commending the enterprise to their prayers, urging the subject upon them by sermons or otherwise, and providing for a collection of the third Sunday in Advent, to be called the "University Offering," and submitted to the General Treasurer for the use of the same.

Resolved, That the bishops, clerical and lay trustees of each diocese be appointed a committee to obtain subscriptions of twenty dollars per annum for five years, payable on Easter Monday, the same to be forwarded by the bishop to the general treasurer, and appropriated to the support of the theological department of the university.

The committee on Statement of Facts and appeals for aid, presented the folowing report:

To the members of the Protestant Episcopal Church in the United States of America:

DEAR BRETHREN: At the annual meeting of the Trustees of the University of the South, held at University Place, Tennessee, August 12th, 1868, it was deemed expedient to address an appeal to the church at large with reference to the university, setting forth what has been done for its establishment, its present condition, future prospects, and urgent claims upon the sympathy and material aid of churchmen in all parts of the land, for its development and support.

And, inasmuch as doubts have been expressed, of late, whether this noble enterprise is ever to be carried out, it was thought well to invite public attention to the subject by recapitulating some of the statements heretofore made, as to the objects had in view in the inception of this undertaking, the wide scope of instruction proposed, the advantage of its local position, the means already provided, and the pressing need which exists for such a university in the present condition of our country.

Before the commencement of our present troubles, the need was felt throughout the more southern portions of the Union, for a school of learning more worthy of our wealth and intelligence, than any which, up to that time had been of easy access to our people.

It is true, and as Americans, we rejoice in the truth, that
118 Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, with other states, could point with pride to their respective time-honoured universities, but still the question was asked by some of our leading and more thoughtful spirits, why should the great southwest, possessing, as it does, every facility for the establishment and support of such a university, be compelled to send its sons abroad, or to a distance from their homes, to be instructed in a wide range of literature, or the higher departments of science. It was,

therefore, felt, that a university proper was demanded, which, while it stored the mind with all that was noble and worthy of remembrance in ancient and modern learning, should with like care and in a corresponding degree, as the only true basis of all education, train our young in the principles of the Christian religion and the goodly ways of the church. To the establishment of such a university on a scale worthy of the people for whom it was primarily intended, of our whole country and of the age, the minds of several leading men of our church were turned with anxious solicitude, more than ten years ago, and the effort to lay its foundations vigorously prosecuted for a time.

The first step to, be taken was to procure a suitable site; one that would be as nearly central as possible to the region more particularly interested, and at the same time in the greatest degree exempt from the diseases incident to the southern climate. After a thorough examination of several places liberally proposed for the purpose, in Georgia, Alabama, Mississippi and Tennessee, choice was made of a beautiful plateau or table land on the Cumberland Mountains, in the County of Franklin, and State of Tennessee, at an elevation of one thousand feet above the surrounding country, and two thousand feet above the level of the sea, a region of the purest atmosphere where sickness is almost unknown, which abounds with freestone and chalybeate waters, presented magnificent views in every direction, underlaid throughout its whole extent with beds of the richest coal, covered with valuable timber, abounding in every variety of stone necessary for useful and ornamental buildings and overlooking valleys rich in the products of the earth. No sooner was this locality selected as the most eligible site, than the neighboring landholders, with a praiseworthy liberality made over to the trustees several tracts, amounting in all to a solid body of ten thousand acres; to this was added a liberal charter by the legislature of Tennessee, which granted every
119 privilege that could be devised for our purpose.

Application was then made to the friends of the undertaking and in a few weeks the sum of four hundred thousand dollars was obtained in reliable subscriptions, the interest of which was to be called in from year to year and expended in the erection of buildings and — other necessary purposes. After due examination and comparison of the advantages of our own and foreign universities, the constitution was framed and the statutes enacted, which looked to the establishment of thirty-two schools and colleges, or constituent parts of the contemplated university. Pledges were at once made towards the endowment of several of these schools and we were assured by one of our bishops that the churchmen in his diocese alone would found one-half of the proposed number. The corner-stone of the main or central building was laid with becoming religious solemnities, in the presence of some thousands, and the jubilant strains of the "Benedicte," were heard on that hitherto silent mountain plateau, calling upon the "dews and frosts," "the hills and waters" to join with the children of men in praising the Lord.

Amidst these prosperous and promising beginnings, came the shock of war, suspending our operations, and by its sad results com-

pelling us to begin anew. We have now to mourn the general impoverishment of our country, the bankruptcy of many of our firmest friends, and the *best* of five of those bishops who joined us heart and hand in the inauguration of this noble enterprise, yet the spirit that animated them still lives in their successors.

And to the oft repeated question, will you attempt with such diminished resources to carry out your undertaking on the same extended scale originally designed? Answer was given in unanimous, unhesitating action of the Board of Trustees: "By the help of God, we will." There was much to encourage and the same motives were presented in intensified degree to prosecute the same anew. Our landed possessions remain to us unimpaired and undiminished in extent, unsurpassed for every advantage which an unrivalled location could afford. We could rely, however, on a small portion only of the amount originally subscribed and that not for the present available. The means now provided have been well nigh exhausted. What is needed now for immediate use is material aid to assist in the erection of additional buildings, for providing the necessary apparatus and the support of teachers and foundation of scholarships, until, with the development of the resources of our country anew, the work shall be placed on a stable foundation, with every guaranty of success.

In anticipation of these larger accommodations and increasing facilities and as pledge that the enterprise has been commenced in earnest the junior department of the university, under a most competent head master, was formally opened on the 17th of September and is now in operation with an able faculty in its scholastic and theological branches to be afterwards enlarged and developed as the means at command will permit.

At this interesting and trying junction is it *to be* expecting too much that you, brethren, and all the faithful will aid us in our work?

We appeal with confidence to the church throughout our whole land to help us in the effort to make our university a great living centre for the education of the young, the extension of the gospel, and the building up of the church. Its importance to the interest of the Redeemer's Kingdom and to the well-being of society in the development of a Christian civilization cannot be overestimated.

The ten dioceses associated in the work embrace an area of 800,000 square miles and contain a population of nearly eight million of souls; and when railway connections now in rapid progress, shall have been completed this university must make its influence felt to the extreme west, as far as the Pacific coast and through all time to come. For this vast region and for these two million of souls the church has not one college or university in operation in which her children may be instructed in her holy ways, or be prepared for carrying out glad tidings of salvation to souls perishing for lack of the bread of life.

The present crisis of the church in all our dioceses demands an earnest, working and native industry, a ministry drawn from the people and sent back to the people, armed with all the panoply of God to do battle for Christ and His church.

We would make common cause with our brethren of our whole country in this great work. It is imperateively demanded of us, of all in every place. The time is at hand. We ask you who are nobly blessed in this world's goods to co-operate with us. We ask your sympathies, your contributions and prayers. We ask early and large responses to our bishops, faithful and beloved, who will be sent among you to make this appeal for aid. Hear them for Christ's sake, we beseech you, and moving on together we shall never cease to pray and labor for the advancement of the Kingdom of our blessed Redeemer until our work is finished and our children and our children's children *and our children's children* shall continue to the latest generation to advance that Kingdom on earth.

WILLIAM MERCER GREEN,
Chancellor, Bishop of Mississippi.
CHARLES TOOD QUINTARD,
121 *Vice-Chancellor, Bishop of Tennessee.*
THOS. F. DAVIS,
Bishop of South Carolina.
THOS. ATKINSON,
Bishop of North Carolina.
ALEXANDER GREGG,
Bishop of Texas.
HENRY C. LAY,
Missionary Bishop of Arkansas & S. W.
R. H. WILMER,
Bishop of Alabama.
J. W. BECKWITH,
Bishop of Georgia.
J. P. B. WILMER,
Bishop of Louisiana.
J. FREEMAN YOUNG,
Bishop of Florida.

On motion of Mr. Fairbanks,

Resolved, That the "Statement of Facts" be approved by the Board and signed by the Chancellor of the University and all the Bishops who are members of this Board.

45. What was the result of these appeals?

(Excepted ——.)

A. To the forty-fifth direct interrogatory witness saith:

As the result of those appeals only $738.00 was received, mainly through church offerings.

46. If as land commissioner for the university you made a report with respect to leasing the lands of the university and in which report you referred to their exemption from taxation, copy so much of your report as relates to that point?

(Excepted to as irrelevant.)

A. To the forty-sixth direct interrogatory witness saith:

As commissi-ner of buildings and lands of the university, I made

a report to the Board of Trustees, at their meeting in August, 1869, with respect to the leasing of the lands, in which report I made reference to their exemption from taxation, in the following words, which I copy from the official publication of their proceedings and make a part of this my answer, to-wit:

"It is to be taken into consideration also, that they will enjoy almost, if not entire, exemption from taxation, and can obtain their fuel from dead and fallen timber without cost from the unoccupied lands. The usual rate of taxation on the property, if held by deed would, in most cases, exceed the amount paid as ground rent, while the advantage of proximity to springs, str-ams, etc., are always deemed elements of value in location. Should experience demonstrate that we have placed too high a rental it can, at any time, be reduced, but a lease, for thirty-three years must remain beyond our power to increase whatever may be the increase in valuation.

122 47. In the expression, "almost if not entirely exempt from taxation" what did you mean?

(Excepted to as irrelevant.)

A. To the Forty-seventh direct interrogatory witness saith:

By the express, "-lmost if not entirely exempt from taxation," as applied to the lots wer were offering for lease within the reserve of one-thousand acres, I meant that the said one-thousand acres was by the charter especially expressly exempted from taxation and that persons leasing such lots would have no taxes to pay, except they had personality liable, or any municipal taxes which might be imposed.

48. If your report referred to was referred to a committee and that committee made a report upon this point, copy it as a part of your answer?

(Excepted to as irrelevant.)

A. To the forty-eighth direct interrogatory witness saith:

My report as commissioner of buildings and lands referred to in the ans-er to the previ-us interrogatory was referred to a committee which made a report which I copy from the official report of the proceedings of the Board and make a part of this my answer an extract from, in the following words: "Your committee recommend that the unapprot-iated portion of one thousand acres of land lying sround the university buildings, is by law exempt from taxation, amounting to about six hundred acres to be surveyed under the direction of the Commissioner of Lands and Buildings and laid of- into lots of an average extent of about two acres. They further recommend that the alternate lots be leased for a term of thirty-three years at a nominal rental of — to any party, who will, within twelve months from date of lease improve them by the erection of s-bstantial buildings, the value of each building to be fixed by the Commissioner of Buildings and Lands and expressed in the lease."

49. If the Board at this meeting published another appeal for air, copy it as a part of your answer?

(Excepted to as irrelevant.)

A. To the forty-ninth interrogatory witness saith:

That the Board of Trustees at their meeting in August, 1869, appointed an agent to canvass the ten dioceses in connection with the university, to solicit cash subscriptions for the purpose of erecting additional buildings, pay off existing debts and for other purposes and the Board adopted an appeal to the friends of the uni-
123 versity, which I copy from the official report of their proceedings and make a part of this my answer, as follows: "Dear Brethren: The Trustees of the University of the South now assembled at University Place, do respectfully submit the following Statement and Appeal:

The rapid increase in the number of students is taxing to the utmost the ability of the University to meet the demands made upon it for accommodations and teachers. Less than one year since the number of students was thirteen, now it is ninety and still applications are being rec-ived. We are in danger of soon being compelled to turn away those who desire the benefits of spiritual and intellectual training, furnished by the University. We therefore appeal to you in t-is emergency to come to our aid and enable us at once to erect buildings and provide for those whom our people are sending t/ us. Should a thousand persons be found ready to uphold our hands at this time by a cash gift of twenty-five dollars each it will enable us to make all the necessary provision for the present, to liquidate all debts and to go forward confidently to meet the responsibilities which the unexampled success of the University is forcing upon us. Ordered, That it be engrossed, signed by all the members of the Board present and furnish to the agent appointed to collect funds.

50. What report did you make as Commissioner of Buildings and Lands to the next meeting of the Board in July, 1876, upon the subject of leases and you will copy so much of it as relates to this subject?

(Excepred to as irrelevant.)

A. To the fiftieth direct interrogatory witness saith:

I made a report *of* Commissioner of Buildings and Lands to the Board of Trustees at their meet/ing held July 11th, 1870, at Sewanee, Tennessee, upon the subject of leases and copy a portion thereof from the official report of their proceedings and make the same a part of my answer: "The undersigned has seen no reason to change the views expressed in his report of last year, in reference to the leasing of the University domain. The growing prosperity of the University has already established a wide-spread confidence in its permanence and success, and has given a considerable appreciation to the value of the lands, and the moderate ground rent charged has, he believes, in no instance, prevented the le-sing of lots by desirable occupants.

It is very important that there should be a settled and uniform policy pursued applicable to all alike. The choice has been given to parties taking leases of town lots and to those south of the railroad, of either taking the usual lease for thirty-three years at the
124 fixed rate, or a lease for ten years only at half rates. Some have preferred the one, some the other. A similar reduction

has been made for short leases of farming lands. I am satisfied that a judicious management of our real estate will, in a few years, produce a very considerable revenue, and eventually a large endowment to the institution.

The system now pursued of leasing at moderate rates, each class of lands, according to location, giving to the first application a choice of situation, requiring improvements of a certain value to be put on the premises within a given time, prohibiting the erection of -og cabins and rail fences, in prominent positions, preserving, as far as possible, the forest growth, encouraging the occupation of lots by mechanics and laborers on short leases at half rates, giving special inducements by short leases at low rates, to market ground and dairy, and reserving certain limits for the university buildings hereafter to be erected, is as well calculated to promote the healthy increase of population and to secure a respectable and substantial class of improvements as any other."

51. If the Committee of the Board on the disposition of the property domain of the university made a report to the Board which was adopted, copy that report as part of your answer?

(Excepted to as irrelevant.)

A. To the fifty-first d/rect interrogatory witness saith:

The Committee on Disposition of the Domain did make a report to said meeting, of the Board of Trustees held July 11th, 1870, — upon the subject of the disposition of the domain of the University, presented the following report:

The committee to whom was referred at the last annual meeting the whole matter of "the disposition of the domain belonging to the university," beg leave to report, that they have considered the same and recommend the adoption of the following rules and regulations:

1. That no part of the domain shall ever be alienated.

2. That in all the leases of ground within the "Reservation," the size of lots, the character of improvements thereon, the extent of clearing, in no case to exceed one-third of the lease, shall be matter of special arrangement with the Commissioner of Buildings and Lands and the executive committee; That, until otherwise ordered, the rate shall continue as heretofore, to-wit: twenty dollars per lot, except in cases hereafter specified; and no lease shall encroach on the sites hitherto designated for college buildings.

3. That in all leases of domain, outside of Reserve, west of
125 the railroad and for a distance of one and a half miles northwest of Polk's Spring, a lot shall not contain more than a hundred feet square, that parties may lease additional ground, adjoining, not to exceed two lots, provided, however, the same shall not impair the value of the building site; all such leases to be subject to restrictions as to improvements, extent of clearing, etc., hereinbefore mentioned.

4. That all leases of any part of the domain southwest of the railroad and beyond a point one and a half miles northwest of Polk's Spring, until otherwise ordered, shall be left to the Commissioner of Buildings and Lands and the executive committee.

5. That the leasing of lots at the depot village (Sewanee), until otherwise ordered, shall be as heretofore directed by the executive committee, viz. "at the same rates as other lots for thirty-three years," and renewable; or, if the lessee prefer, for ten years, then at half such rates and otherwise to be on same conditions as other leases; and that all storehouses and workshops of every description shall be confined to that locality.

6. That, no standing timber outside of lots leased shall be in any case cut, without the permission of the Commissi-ner of Buildings and Lands.

7. That all springs within the radius of not less than fifty feet and a right of way, shall be forever reserved from lease.

8. That no lease shall exceed the term of thirty three years, or be accompanied with the privilege of more than two renewals; that no leases shall be transferred or any portion thereof sub-let, without the consent of the Commissioner of Buildings and Lands and that, in all cases of transfer, the University shall have the refusal, unless some special arrangement shall have been made to the contrary; that, at the expiration of the first term, the University shall have the option of ending the lease and resuming possession of the premises, by paying for all improvements made thereon, or may renew the lease on such terms as may be agreed upon by the parties, respectively, but, in case said parties cannot agree upon the value of improvements, or the rental to be paid, for the new term, the same shall be determined by arbitration, one to be selected by the Commissioner of Buildings and Lands and the other by the lessee; and, in case they cannot agree, they shall call in an umpire; provided, however, that in no case of the renewal of a lease and the fixing upon the rental of the same, shall improvements be taken into account as against the lessee, his heirs, administrators, or assigns.

9. That no *lease* shall be allowed to sell, or shall permit to
126 be sold or retailed, any beer, wine, or liquor, whatsoever, or permit gambling, or gaming of any description to be carried on, upon such premises, or allow to be kept any billiard table, bowling alley, or shooting gallery, without permissi-n in writing of the Commissioner of Buildings and Lands and the executive committee, or suffer any business to be carried on injurious to the interest of the general welfare of the university.

10. That the bishops, clerical trustees, instructors of the University, and all of-icers of the same, shall pay a rental of not more than five dollars per annum, while in actual occupation of said premises by themselves, their widows and children, but, in case of transfer to other parties other than of the the classes hereinbefore enumerated, then any such lease shall be subject to the general provisions regulating leases; and, further, that the same privilege, under the like restrictions, shall be extended to the widows of bishops and of clerical trustees, who are associated in the inception of the university.

11. That all leases of land, or other privileges given in connection with the univeiersity domain, shall, in addition to the restrictions hereinbefore made, be subject to the constitution, statutes, and regulations of the university, which may be of force at the time.

And forasmuch as the main design in the establishments of the university was to advance the educational work of the church in the ten dioceses united in the same, and assist in building up the church itself, be it

Resolved, That no lease shall ever be given, or any privileges whatsoever allowed in connection with the University Domain, which shall in any way conflict with the objects had in view in the establishment of the university, or hinder the godly designs of its founders.

ALEXANDER GREGG.
L. W. WHITTLE.
J. M. BANNISTER.
G. R. F. FAIRBANKS.
J. GORGAS.

52. If the committee on buildings made a report at that time, showing the number of leases then made on the reserve, copy so much of it as gives the number and what is said with respect to said reserve and the leases thereon and the rents thereof?

(Objected to so much as gives what was said about — in the report or otherwise.)

A. To the fifty-second direct interrogatory, witness saith:

The committee of buildings and lands did make a report to the Board of Trustees, at their meeting held July 11th, 1870, in
127 reference to leases within the reserve, a porti-n of which report I copy from the official report of proceedings and make a part of this my answer, viz:

"It appears that 22 of the leases were within the reserve, containing 112 acres, and thirty acres to the Bishop of Mississippi, one hundred and sixty acres for the university buildings, making three hundred and two of the one thousand acres of the reserve already appropriated and for the most part the most eligible sites.

Your committee recommend tha adoption of the following resolutions:

1. Resolved, That a memorandum of all the leases be given to the bursar of this institution and that he collect the rents and transmit them to the general treasurer.

53. What amount was contributed by each of the Southern States to the University in the year 1870?

(Excepted to as irrelevant.)

A. To the fifty-third direct interrogatory witness saith:

From the official report made by the treasurer to the Board of Trustees, at their meeting of July 11th, 1870, it appears that there had been contributed, since August of the year previous, in aid of the university, the following sums for the several states, respectively:

North Carolina	$988.00
Alabama	1100.55
South Carolina	990.90

Florida	38.00
Georgia	2598.00
Mississippi	352.55
Louisiana	831.85
Texas	352.62
Tennessee	233.65
Total	$7468.18

54. Quote as a part of your answer so much of your report of 1871 as relates to the number, etc., of the leases then existing?

(Excepted to as irrelevant.)

A. To the fifty-fourth direct interrogatory witness saith:

I copy from my official report as commissioner of buildings and lands, made to the Board of Trustees, at their meeting held July 12th, 1871, so much as relates to the number and character of the leases then existing and make the same a part of this my answer, to-wit:

"The domain of the university is increasing in value with the progress of settlement and improvement. Forty-one leases have been executed since July 1st, 1870, the whole number being
128 seventy-six. Of these thirty-four are at the rate of $25.00 per annum; seventeen at the rate of $12.50 per annum; twenty-one at the rate of $6.50 per annum; one at the rate of $10.00 per annum; and three at rates upwards of $25.00 per annum, owing to increased quantity of land; and eight at nominal rates. * * * The domain of the university, if managed with prudent forecast, will create, at no distant day, a secure endowment, ever increasing in value."

55. What amounts were contributed to the university by the general states in 1871?

(Excepted to as irrelevant.)

A. To the fifty-fifth direct interrogatory witness saith:

As appears from the official report of the treasurer of the university, made to the Board of Trustees, at their meeting held July 12th, 1871, there were contributed, since July of the previous year, the following sums from the several states named, respectively, viz:

Texas contributed Advent offerings	$680.49	
Coupon Notes	1550.00	
		$2265.49
Alabama contributed Advent offerings	444.75	
Coupon Notes	605.00	
Individual Donations.	120.00	
		1169.75
Louisiana, contributed Advent offerings	403.90	
Coupon Notes	120.00	
		523.90

COPY BOUND

Georgia contributed Advent offerings.....	231.50	
Coupon Notes.....	170.00	
		401.50
Mississippi contributed Advent offerings.....	101.50	
Coupon Notes.....	.....	
		101.50
Florida contributed Advent offerings.....	58.00	58.00
Arkansas contributed Advent offerings....	.....	17.25
Tennessee contributed Advent offerings.....	131.58	
Coupon Notes.....	140.00	
Individual Donations.	50.00	
		321.58
Total		$4858.97
And also from P. W. Gray, Texas, for school building..		1500.00

56. State whether or not in 1871, the charter of the University was so amended as to clothe it with general municipal powers, was such amendment accepted and were the ordinary town officers appointed?

A. To the fifty-sixth direct interrogatory witness saith:

At the June term, 1871, of the Chancery Court at Winchester, Tennessee, the charter of the university was amended so as to clothe the university with general municipal powers and which such amendment of the charter was formally accepted by the Board of Trustees at the meeting of the Board held at Sewanee, July 12th, 1871, and a recorder and a marshal were duly elected.

57. If as Municipal Recorder in 1872 you made any report with respect to assessments, quote so much as relates to that subject?

(Excepted to as irrelevant.)

A. To the fifty-seventh direct interrogatory witness saith:

I did make a report to the Board of Trustees, at their
129 meeting held July 10th, 1872, as Recorder of the Municipality and copy from my said report and make a part of this my answer so much of said report as refers to assessments: "We have, however, had no power to pay, by assessment, the expense of employing the officer without additional power conferred by this Board. Some additional ordinances are necessary to complete our code, as also some provision to meet the expense of paying the salary of the marshal and of feeding the prisoners."

58. If the Board, in compliance with your suggestion, passed an ordinance upon that subject at that meeting, make a copy of it as a part of your answer?

(Excepted to as irrelevant.)

A. To the fifty-eighth direct interrogatory witness saith:

The Board of Trustees of said University, at their said meeting of July 10th, 1872, did make an ordinance, in compliance with the

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suggestions made in my report as recorder, upon the subject of assessment, which said ordinance I copy from the official report of their proceedings and make a part of this my answer, as follows, to-wit:

"Be it further ordained, That the sum of two and a half mills on the dollar be assessed upon the appraised value of all leasehold property, including buildings and improvements, such assessments to be applied to the municipal expenses. Such appraisement and assessment shall be made by the Treasurer and the Commissioner of Buildings and Lands, and, on completion of their assessment, they shall deliver a copy of the same to the Marshal to collect the amounts so assessed, which, when collected shall be immediately paid over to the Treasurer."

59. If at that meeting of the Board there was a declaration by the Board with respect to the reserve of 1000 acres, make it a part of your answer?

(Excepted to as irrelevant.)

A. To the fifty-ninth direct interrogatory witness saith:

There was, at that meeting of the Board of Trustees, held in 1872, a declaration by the Board in respect to the reserve of one thousand acres, and I copy the same from the official report of their proceedings and make it a part of my answer, viz:

"On motion of Rt. Rev. Bishop of Florida, the following preamble and resolutions were adopted:

Whereas, This domain was granted for the sole use and benefit of the University of the South, and,

Whereas, This Board has set apart a reservation of one
130 thousand acres as a college campus, in order to keep from its immediate neighborhood the residence of all persons not immediately connected with the university and its operations; therefore,

Resolved, That the interests of the university are and ought to be considered by all living on this reservation, paramount to every other consideration always and in all things.

Resolved, That the following be adopted as statute: The Vice-Chancellor is authorized to make such regulations as to times of recreations, amusements and general social gatherings, as may be necessary to prevent interruptions of study and relaxation of discipline."

60. If at the meeting of the Board in 1873, there was further action with respect to municipal taxation, quote so much of the proceedings as relate thereto?

(Excepted to as irrelevant.)

A. To the sixtieth direct interrogatory witness saith:

There was further action in respect to municipal taxation at the session of the Board of Trustees of the University, held July 16th, 1873 and I make the same part of my answer, viz:

"Mr. Fairbanks offered the following resolution:

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"Resolved, That —— be authorized to apply in the name of the trustees to the Chancery Court of the district for more precise and ample authority to provide for the assessment and collection of taxes within the domain, for municipal purposes."

"The blank *a* was filled with the words, "the Commissioner of Buildings and Lands," and the resolution adopted."

61. State whether the charter was again amended on this point?

A. To the sixty-first direct interrogatory witness saith:

The charter of the university was again amended, so as to clearly express the power of the university to impose taxes for municipal purposes.

62. What amount of taxes were levied for municipal purposes in 1874? Make a copy of the ordinance a part of your answer?

(Excepted to as irrelevant.)

A. To the sixty-second direct interrogatory witness saith:

There was an ordinance with reference to taxation for municipal purposes passed by the Board of Trustees, at its annual meeting, August 5th, 1874, which I copy from the official report of its proceedings and make a part of my answer as follows: "Mr. Fairbanks offered the following ordinance:

131 "Be it further Ordained, That for the year 1874-5, that the sum of three and one-third mills on the dollar be assessed upon the appraised value of all leasehold property, including buildings and improvements; and such shall be applied to municipal expenses. Such appraisement and assessment shall be made by the Treasurer and the Commissioner of Buildings and Lands and, on the completion of the assessment, they shall deliver a copy of the same to the marshal to collect the amount so assessed, which, when collected, shall be paid over to the Treasurer."

64. Quote so much of your report of 1875 as relates to assessment and repairs of streets and side-alks?

(Excepted to as irrelevant.)

A. To the Sixty-fourth direct interrogatory witness saith:

I made a report as Commissioner of Buildings and Lands to the Board of Trustees, at their annual meeting, held August 4th, 1875, and I copy from the official report of their proceedings so much of my report as relates to assessments and repairs of streets and sidewalks and make the same a part of this my answer, viz: "The streets and public grounds have been kept in good order and improved to the extent of the limited means available for that purpose. The opening of new streets and the increase of travel and traffic require that funds should be specifically appropriated to that purpose. A moderate assessment upon the leasehold property would provide the necessary means, if it could be promptly collected. The careful work done last year has rendered a smaller expenditure requisite the present season to keep the streets in fair condition. A system of curbing and establishing sidewalks has been begun at a very moderate cost and when continued and completed will overcome the dis-

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adva-tages of heavy rainfalls and winter frosts, heretofore so disagre-ably felt."

63. Quote so much of your report for 1874 as relates to the matter of taxation and the reason for it?

(Excepted to as irrelevant.)

A. To the sixty-third direct interrogatory witness saith:

A. I have made a report as Commissioner or Buildings and Lands to the aforesaid meeting of the Board of Trustees, at their meeting, August 5th, 1874, from which said published proceedings of said meeting, I copy so much of my said report as relates to the matter of taxation and the reasons for it, and make the same a part of this my answer, viz:

"The increased travel over and the use of our streets and roads, with the lo-se texture of the soil, make the keeping of them
132 in go*l*d repair more and more expensive. Grading and fil-ing to a considerable extent has been requisite the present year, principally about the depot. To meet these expenses a small tax has been imposed and is in progress of collection. * * * In pursuance of the authority given at the last meeting of the Board, I prepared a petition to the Chancery Court for an amendment of our charter, specifically authorizing us to levy taxes for necessary municipal purposes within our domain. A decree was made in January last, granting the powers asked for, to be incorporated as an amendment to our charter. A certified copy of the decree is herewith laid before the Board.

65. What report did you make upon this point in 1875, and quote so much *i* of it as relates to the subject?

(Excepted to as irrelevant.)

A. To the sixty-fifth direct interrogatory witness saith:

I made a report to the Board of Trustees at their annual meeting, July 29th, 1876, as Commissioner of Buildings and -ands, and I copy from the official report of their proceedings, so much of my said report as relates to the repair of streets and as to assessments and make the same a part of this my answer, viz:

"The repair of the streets has necessarily been confined to a very small expenditure, the whole amount for the year, inclusive of parks and public grounds, reaching only $84.00. The heavy rains during the past spring were very injurious; and it will be necessary, before winter, to give considerable attention to drainage and proper grading. Our statutes already require that lessees of lots should make suitable sidewalks and the keeping up of the streets should be cha-geable by assessment upon all the leasehold property, as our lessees are almost completely exempt from any other taxes or assessments and have expressly stipulated in their leases to pay such taxes and assessments as may be made. A small assessment should be made for this purpose."

66. State whether or not the provision in the leases made for the

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payment of taxes was inserted to secure the payment of said municipal taxes and for no other reason or purpose?

(Excepted to as irrelevant and matter of opinion of witness.)

A. To the sixty-sixth direct interrogatory witness saith:

The clause in the leases made with reference to the payment of taxes was inserted to secure the payment of municipal taxes. The charter as amended January 19th, 1860, having provided that the said university should have a right to establish such police
133 and municipal regulations as might be necessary for the preservation of order and the enforcement of the by-laws of the university and also because some of the leases were being made and more were expected to be made, to parties occupying lands outside of the one thousand acres exempted by the charter from taxation and although this exemption was expressly and clearly made in and by said charter, it was thought prudent as a measure of precaution against any possible risk to the university to insert this clause in all the leases which were made in one prescribed form, and were all alike in their limitations, conditions, and provisions. There is no such requirement as to taxes in the regulations for leasing the domain.

67. State about the amount contributed each year to the university since 1874?

(Excepted to as irrelevant.)

A. To the sixty-seventh direct interrogatory witness saith:

The amount contributed each year in addition to the amounts mention- in my previous answer, relating to the years, 1870, and 1871, are about as follows:

From all sources in	1871-2	$8570.00
	1872-3	6930.00
	1873-4	8630.00
	1874-5	11714.00
	1875-6	20250.00
	1877-8	3880.00
	1878-9	3466.00
	1879-80	5117.00
	1880-1	3316.00
	1881-2	2950.00
	1882-3	5002.00
	1883-4	4875.00
	1884-5	7585.00
	1885-6	16237.00
	1886-7	3711.00

68. State the number and value of the permanent educational buildings which have been constructed and the probable cost of all the educational buildings contemplated to make the university what it was intended to be?

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A. To the sixty-eighth direct interrogatory witness saith:

The permanent educational buildings which have been constructed up to this time have cost about $75,000.00. The cost of all the educational buildings contemplated to make the university what it was intended to be would reach the sum of six hundred thousand dollars.

69. Has the Board had much or little difficulty in raising means to equip and maintain the university?

(Excepted to as irrelevant.)

A. To the sixty-ninth direct interrogatory witness saith:

The Board of Trustees have had much difficulty in raising
134 means to equip and carry on the university.

70. What amount of debt does the university now owe?

(Excepted to as irrelevant.)

A. To the seventieth direct interrogatory witness saith:

The university now owes a debt of $33,000.00.

71. State whether all the rents arising from the leases of the university have been applied exclusively to the erection of educational buildings, paying professors and other expenses in maintaining said university?

A. To the seventy-first direct interrogatory witness said:

The income arising from the leases made by the university have been applied exclusively to the erection of the educational buildings, paying professors, and other expenses, in sustaining the university, but, for several years past almost exclusively to the payment of interest on the bonded debt of the university.

72. What amount of money will it require to erect all the buildings of said university and equip it as intended?

(Excepted to as irrelevant.)

A. To the seventy-second direct interrogatory witness saith:

To erect all the buildings intended and to equip the several departments of the university properly will require over the sum of $600,000.

73. What amount of additional capital will require to endow it as intended?

A. (Excepted to as irrelevant.)

A. To the seventy third direct interrogatory witness saith:

To endow the university as intended will require the sum of at least three million of dollars, which is less than half of the sum of the endowment of Columbia College, in the City of New York.

74. Have the rates of tuition been high or low, say how high and why?

A. To the seventy-fourth direct interrogatory witness saith:

The rate of tuition at the university is high as compared with state institutions, because it has neither endowment nor state aid.

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75. Examine all the existing leases in the reserve, say how many there are, the rate of rent, how long they run and how many for each term?

A. To the seventy-fifth direct interrogatory witness saith:

I have examined the schedule of leases of the university and the following copies of such schedules will give the informayion called for:

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Date.	Y'rs.	Lessees.	Emp't.	An. r'nt.	An. coll'n.
Aug.	1869—33	B. L. Wiggins (Bp. Qintard)	Profr.	Noml.	1.00
Jan.	1871—33	Rev. Telfair Hodgson	V. Chanc.	5.00	5.00
Mch.	1871—10	Jno. W. Weber, Mr. Greek	Greek Sch.	5.00	5.00
Mch.	1871—33	G. T. Wilmer	Profr.	5.00	5.00
July	1871—33	Alex. Gregg	Bish. & Tr.	5.00	5.00
Dec.	1872—33	Jno. B. Elliott	Profr.	5.00	5.00
Apl.	1873—33	W. P. Du Bose	"	5.00	5.00
Sep.	1879—33	J. H. Gallagher	Bish. & Tr.	5.00	5.00
Jan.	1880—33	E. Kirby-Smith	Profr.	5.00	5.00
Apl.	1884—33	T. F. Gailor	Profr.	5.00	5.00
Jan.	1886—33	F. W. Page	"	5.00	5.00
Jan.	1887—33	E. R. Webster	"	5.00	5.00
May	1887—33	J. W. S. Arnold	"	5.00	5.00
May	1887—33	F. S. Guhtrie	"	5.00	5.00
Jan.	1880—33	Students Society Halls		25.00	25.00
Apl.	1884—33	" " "		25.00	25.00
Dec.	1884—33	" " "		12.50	12.50
Jan.	1885—33	" " "		12.50	12.50
June	1887—33	" " "		12.50	12.50
"	1887—33	L. W. Green, acct. Bp. G. Bd. H.	Bdng. Hse.	5.00	5.00
Dec.	1869—33	A. E. Gibson	" "	25.00	25.00
Oct.	1870—33	W. F. Shine	" "	25.00	25.00
Nov.	1870—33	F. O. Barnwell	" "	25.00	25.00
June	1871—33	F. A. Corpening	" "	25.00	00.00
Dec.	1871—33	M. L. Carruthers	" "	25.00	25.00
Aug.	1871—33	M. E. Huger	" "	25.00	25.00
Sep.	1871—33	S. L. Eggleston	" "	25.00	00.00

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Jan.	1873—33	M. L. Porcher	"	"	25.00	25.00
Apl.	1873—33	J. A. Satterwhite	"	"	25.00	25.00
July	1872—33	M. C. Wicks	"	"	25.00	25.00
"	1880—33	S. E. Richardson	"	"	6.25	6.25
Nov.	1879—33	F. A. Elmore	"	"	25.00	25.00
Aug.	1879—33	F. A. Glass	"	"		25.00
June	1885—	S. McGrady	"	"	5.00	5.00
"	1884—	Miss M. Miller	"	"	25.00	25.00
Dec.	1869—	Drug Store			25.00	25.00
May	1871—	L. Pillet	Un. Tailor		25.00	25.00
June	1884—	M. E. Eggleston	Sch. Tchr.		5.00	5.00
July	1885—	Mrs. J. M. Herndon	Bdng. Hse.		25.00	25.00

Leases Occupied Temporarily or at will by servants, on 100-acre Revn.

Aug.	1885—	James Durwin	Servant		12.50	12.50
Oct.	1885—	Marcus Handley	Barber		12.50	12.50
May	1886—	S. Wood	Servant		12.50	00.00
Jan.	1887—	Jos. Garner	"		12.50	00.00
Jan.	1887—	Allen Green	"		12.50	00.00
June	1880—	Milly Holder	"		6.25	6.25
Oct.	1881—	H. Farris	"		8.00	00.00
Jan.	1883—	C. Rows	"		6.25	6.25
Jan.	1883—	J. Jonson	"		6.25	6.25
July	1884—	H. Winton	"		5.00	5.00
Apl.	1885—	B. Brown	"		12.50	12.50
		S. Stamps	"		12.50	00.00

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List of Leases in 1000-*acres Reservation to Persons Not Connected With Un.*

Date.	Y'rs.	Lessees.	Emp't.	An. r'nt.	An. coll'n.
Apl.	1867—15	Geo. D. Gipson	Merchant	12.00	12.00
Nov.	1874—33	F. J. Harlow	Citizen	25.00	00.00
Jan.	1868—10	G. R. Fairbanks	Pt. Hotel	25.00	25.00
July	1869—10	G. W. Rice	Estate	12.50	00.00
July	1869—10	Allen Gipson	Farmer	12.50	12.50
"	1869—10	G. R. Fairbanks	Sum. Rest.	12.50	00.00
July	1869—33	Wm. Fischer	Tinner	15.00	25.00
Aug.	1869—33	G. R. Fairbanks	Trustee	37.50	37.00
Oct.	1869—33	University Hotel Co.		25.00	25.00
Dec.	1869—33	R. L. Colmore	Butcher	25.00	25.00
Jan.	1870—33	Telfair Hodgson	V. Chanc.	25.00	25.00
July	1870—10	C. W. Hayes	non-Rest.	25.00	00.00
Sep.	1870—10	G. A. Mayhew	Just. of	12.50	00.00
July	1871—33	S. S. Cotton	Resident	25.00	00.00
Sep.	1870—33	C. B. Elliott, Bishop	Widow of	5.00	00.00
July	1870—10	Frank Short	Mason	12.50	12 50
July	1870—10	W. H. Clay	Painter	12.50	12.50
Oct.	1885—10	W. C. Luny	Merchant	12.50	12.50
June	1886—33	J. B. Powell	Shoe-makr.	25.00	25.00
Oct.	1870—10	G. R. Fairbanks	Lay Trus.	12.50	12.50
Aug.	1871—33	J. I. Anderson	Doctor	25.00	25.00
Sep.	1879—10	S. Sutherland	Widow	12.50	12.50

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Date.	Y'rs.	Lessee.	Emp'm't.	An. r'nt.	An. Collections.
Mch.	1871—10	Mrs. A. S. Jones	Widow	12.50	12.50
Mch.	1871—10	Mrs. Thomas	Labr.	12.50	12.50
Mch.	1871—33	Mrs. F. Fischer	Cab. Mkr.	25.00	25.00
July	1871—10	Wm. Philpot	Capr.	12.50	10.00
Feb.	1871—	A. Gipson	Don. Lnd.	Noml.	00.00
Aug.	1871—33	H. F. Smith	Widow	25.00	00.00
Aug.	1871—10	L. Munley		12.50	00.00
Sep.	1871—33	P. S. Brooks	Mercht.	25.00	25.00
Aug.	1871—10	L. Pillet	Tailor	12.50	12.50
Sep.	1871—10	C. Ruef	Butchr.	15.00	15.00
Dec.	1871—33	Mrs. N. Weber	Sum. Res.	35.00	00.00
Jan.	1872—33	H. W. Brazelton	Ex. Agt.	12.50	12.50
Mch.	1872—10	R. W. Jackson	Carpr.	12.50	12.50
Mch.	1886—33	C. H. Leffler	Sum. Res.	25.00	25.00
Oct.	1886—10	Fred. Fischer	Cab. Mkr.	12.50	00.00
Nov.	1871—10	T. J. Harrison	Blcksm.	12.50	00.00
Dec.	1871—10	Mary Usey		12.50	12.50
Feb.	1872—33	S. C. Hoge	Merch.	25.00	25.00
Feb.	1872—33	P. S. Brokks & Co.	Merchs.	25.00	25.00
Feb.	1872—33	C. Ruef	Butch.	25.00	25.00
Apl.	1872—10	J. N. Stewart	Carpr	25.00	00.00
Apl.	1872—33	C. H. Wadhams	Baker	25.00	00.00
Apl.	1872—33	Mrs. H. V. Herndon	Bdng. H.	25.00	00.00
May	1872—10	Jos. Armstat	Carpr.	12.50	12.50
June	1872—33	Mrs. L. V. Juny	Widow	25.00	25.00
Apl.	1873—33	S. C. Hoge	Merch.	25.00	25.00
Apl.	1873—33	W. H. Johnson	Shoemr.	25.00	00.00

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Leases Persons Not Connected With University—Contd.

Date.	Y'rs.	Lessee.	Emp'm't.	An. r'nt.	An. Collections.
Jan.	1874—33	Mrs. J. O. Lovell	Smr. Res.	25.00	25.00
Jan.	1874—33	A. M. Read	Smr. Res.	25.00	25.00
Jan.	1876—33	Miss Dorsey	Millr.	25.00	25.00
Jan.	1876—33	C. S. Judd	Photr.	25.00	00.00
May	1876—10	A. Van Vlack	Semps.	12.50	12.50
Nov.	1876—10	M. L. Porcher	Bdg. H.	12.50	12.50
	—33	Telfair Hodgson	Don. Lib.	Nominal.	
Oct.	1879—10	Rachel Du Bose	Servt.	12.50	12.50
May	1885—10	T. Gipson	Merch.	12.50	12.50
Mch.	1885—33	O. Fischer	Carpr.	25.00	25.00
May	1885—10	J. M. Castlebury	Teamstr.	12.50	12.50
May	1885—10	D. A. Hudson	"	12.50	12.50
Sep.	1886—10	R. J. Gillespie	Plastr.	17.00	17.00
July	1884—10	D. Statum	Wag. mkr.	12.50	00.00

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76. What is the gross amount of the rents now received for each year for the lots leased inside of the Reserve of 1000 acres and what amount will it cost to collect them?

A. To the seventy-sixth direct interrogatory witness saith:

The gross amount of rents received during the past year from lots leased inside the 1000-acres reservation appears from such schedules to be the sum of $1398.55.

77. Give the exact number of the lots leased inside of the reserve, the number occupied by professors, officers, trustees, and all others connected with the university, and also the number of those held by tenants who have no connection with the university?

A. To the seventy-seventh direct interrogatory witness *a* saith:

My answer to the preceding, 75th, interrogatory, embraces the information called for in this interrogatory in detail. The number of lots leased inside of the reserve and which are occupied by professors, officers, trustees, and others connected with the university is forty.

137 The number held by tenants who have no connection with the university is 69; and temporary leases for servants employed at the university, 12. Some individuals hold more than one lease.

78. State whether or not all these held by those connected with the university have the rent regulated with respect to their connection with the university, or whether they were intended to be charged the full value of the rents in money?

State what rents the professors pay, what rents the clergy pay, what rent the officers and agents of the university pay, and say whether they are estimated in connection with the services rendered by them?

(Excepted to as irrelevant.)

A. To the seventy-eighth direct interrogatory witness saith:

There is a distinction made in the rate of rent charged to persons connected with the university and others who are not so connected. A provision is made in the regulations relative — the leasing the domain, that "the bishops, clerical trustees, instructors, in the university and officers of the same, shall pay a rental of not more than five dollars per annum, while in office, and, in case of their death while in office, then the same privilege applies to all lots held by lease by the professors, and officers connected with the university as a recognition of their services and to enable and encourage them to have houses in the vicinity of the university educational buildings.

79. What was the cash market value of the 1000-acres reserve at the time the university took title in 1858?

(Excepted to as irrelevant.)

A. To the seventy-ninth direct interrogatory witness saith:

I first visited the site of the university, now known as Sewanee, in 1858, shortly after the selection of this location for the university. There were, at that time, no inhabitants here, but a perfect wilderness. Mr. Squire Hawkins, residing at the foot of the mountain, came up with me as a guide; a little cabin stood near "Rowes Spring," occupied, I was told, only in the summer by a farmer from the valley. About

two miles northeast from the present Sewanee Railroad Station, there was a house or two, where the Mining Company had first attempted to mine for coal. At the present Railroad Station, there was nothing whatever, nor was it even used as a stopping place. There was literally nothing then on the present university lands to give any element of value. I understood at that time, that the lands on the Mountain had been given gratuitously to the extent of 5,000 acres as grants to any one applying for them and that they had very little value
138 or price, in small tracts, perhaps, $1.00 per acre; in large tracts it was said they could be bought at from 50¢ to 75¢ per acre. I observe that the consideration named in the deed from Abram Bowers to the university, of two hundred and fifty acres, lying within from a quarter of a mile to a half mile from the present Railroad Station at Sewanee, made in 1858, after the location of the university, was three hundred dollars, being at the rate of one dollar and twenty cents per acre, and the land conveyed by a warranty deed. I should say, therefore, that the cash market value of the one-thousand-acres reserve, at the time the university took title in 1858, did not exceed the sum of one thousand dollars, if as much as that.

80. Were all the lands to which it acquired title improved or unimproved lands, were they of agricultural value?

(Excepted to as irrelevant.)

A. To the eightieth direct interrogatory witness saith:

The lands to which the university acquired title were unimproved lands and had, apparently, then, no agricultural value. It was considered then, and to a large degree is considered now, that these mountain lands are not desirable for agricultural purposes, on account of the thinness of the soil and its poverty compared with the lowlands lying alongside in the valleys.

81. What is the real cash value of the lots within the reserve leased by persons not connected with the university?

What is the value of these leased by those connected with the university within the reserve?

(Objected to, because it is irrelevant for the reason that the assessment is conclusive, when not disputed in the manner provided by the statute in such cases.)

A. To the eighty-first direct interrogatory witness saith:

It is difficult to say what is the cash value of the lots within the reserve leased by persons not connected with the university. There have never been any lots sold; and, under the regulations and policy adopted by the university, and a part of its written law, no portion of the domain is ever to be alienated. Their value aggriculturally, of the half acre, or two or three acres, as the case may be, is nothing. Their value is in their simple use for residences and depends on the success of the university. If we adopt the English rule of computation, and consider the value of the lots, whatever sum the net rental would be the interest of, and were to consider the net rental after deducting the cost of collection, of lots leased at twenty-five dollars per annum, as twenty dollars per annum, that at six per
139 cent. would be the interest on $333.33 and on those netting $10.00 per annum would be the interest on $166.66; and on

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the $5.00 rental, $83.33 each. Making the calculation on this basis, the valuation of all the lots on which rent has been collected the past year from persons not connected with the university would be about $10,107.00, and the lots occupied by persons connected with the university would be $7,007.00 and of servants at will, $883.00. It must be borne in mind that by an established regulation of the university all business houses on the northwest side of *of* the railroad are confined to a limit of about three hundred yards from the railroad station and cannot come within a distance of nearly a mile of the educational buildings of the university, that these village lots for business purposes are generally on ten-year leases, and that much the larger proportion of the other lots leased can only be used for residences which impairs very greatly their market value. In fact these lots can-ot be said to have an open market value, as there has probably never been any lot leased except for purposes or considerations connected with the university. The fact also that the institution belongs to and is carried on under the auspices of one religious body, would naturally confine the number of lesse-s or purchasers, supposing the lots open for sale, to persons of that religious connection. Their cash market value would also be affected by the fact that the university is closed during the winter months, and hence, no permanent, all the year around population maintained, which paralyses business during the winter months. The area of land embraced in the lots leased to persons not connected with the university, on which rental is charged, is only about 80 acres in all. In point of fact, all of the best residences and most valuable improvements, and those most eligibly situated, on account of proximity to the university, built by private parties, are those of the various officers, professors and other persons connected with the university, such as Dr. Hodgson's, Bishop Quintard's, Gen. Smith'- Bishop Gallagher's, etc. I do not suppose that any one familiar with the locality and with a knowledge that these mountain lands are not usually estimated as being worth over one or two dollars per acre, would place the real cash value of lots within the one-thousand-acre reserve, leased to persons not connected with the university, at over 50¢ to 75¢ per acre, or altogether say $5,000. at the outside. The lots leased to persons connected with the university are many of them paying a mere nominal rent of $5.00 per annum. On the main street or avenue, on which the university buildings front, from the hotel north, to the last building, a distance of nearly a half mile, there are only eleven leased lots, comprising most
140 of the best residences and of these only four pay over five dollars per annum and the remainder bring in only about $112.50 per annum altogether. The real cash value of the lots leased to persons connected with the university and either paying a nominal lease, or, as boarding houses, paying $25.00 *dollars* per annum, and which cover about fifty-six acres I think would not be put by any person familiar with the locality, at over $5,000., if they were open for sale. Sixteen of the lots embrace only half of an acre each and only fourteen over one acre. There is no means by which any one

could make a livelihood by owning one of these lots, except in connection with the university.

82. What was the population of Sewanee in 1867, and what has been its probable population each year down to the present time aside from those connected with the university?

A. To the eighty-second direct interrogatory witness saith:

At the beginning of the year 1867, there were only four families living at the place known as Sewanee. A frame building, one and a half stories high, known as Otey Hall had been built, and Bishop Quintard and witness had each built a log cottage in the latter part of 1866. Mr. Tomlinson and Tim Castlebury had also small single room log houses. During the course of the year 1867, it having been decided at Montgomery, to endeavor to go in with the enterprise, two more houses were built and an additional building at Otey Hall. In 1868, in order to accommodate the students, when the school was opened, a large boarding house was built, called Tremlett Hall, from the funds given in England, and named after a gentleman who had actively aided Bishop Quintard in obtaining funds. Sewanee has a double meaning, either as applied to the railroad station, where the postoffice and the business houses were located and the mechanics and laboring population generally live, and also as applied to the whole domain, and the community surrounding the educational buildings. There are about forty families of persons forming the university community at present and probably an equal number in and around the depot village; about thirty of the fifty families forming the university community are connected with -e university as professors, officers, or boarding-house keepers, etc. There was about 1870 quite an accession of families and of merchants and laborers, around the depot; afterwards it remained at a standstill and at times decreased. There had never been more than six or seven hundred people at Sewanee, inclusive of the village, at any time. I am unable to state what the population has been from year to year outside of those connected with the university, but should say it has not at any time, and does not exceed five hundred.

141 83. State what the annual at-endance of students has been from the time the university began its operations down to the present time?

A. To the eighty-third direct interrogatory witness saith:

The annual at-endance of students from the time the university was opened, until the presen- time, has been as follows:

Number in 1868.....	14	Number in 1877-8	217
1869.....	87	1878-9	190
1870-1	240	1879-80	163
1871-2	223	1880-1	189
1872-3	256	1881-2	186
1873-4	262	1882-3	183
1874-5	245	1883-4	182
1875-6	201	1884-5	229
1876-7	202	1885-6	261
		1886-7	301

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84. Give the development of the curriculum of the university from the beginning down to the presrnt time, state the degree of its expansion at the present time?

(Excepted to as irreleveant.)

A. To the eighty-fourth direct interrogatory witness saith:

The scholastic operation of the university we opened in September, 1868 by the formal opening of the junior department. The firstn term began September 8th, 1868 and ended December. There were three teachers employed the first term. The departments opened the first year were Greek, Latin, mathematics, English langiage and literature and metaphysics. In 1870 the curriculum was still further enlarged. In 1870 the Board decided to establish its school of the university on their appropriate basis and to make a subordinate department to be known as a grammar school. This was carried into effect and the following established as the schools of the university to be put into operation, viz:

1. A school of ancient languages, to embrace for the present, both Greek language and literature and Latin language and literature.
2. A school of modern languages embraving French, German, Spamish and Italian.
3. A school — mathematics.
4. A school of metaphysics, embracing for the preesent the schools of English language, rhetoric, composition, etc.
5. A school of civil engineering.
6. A school of chemistry.
7. A school of moral science and evidences of christian religion.

The university employed in the year 1871-2 seven professors besides grammar-school teachers.

In 1880 the school of ancient languages, modern languages chemistry, mathematics, ethics and evidences of christianity, meta-
142 physics, English langiage and literature, geology and mineralogy, engineering and physics, political economy and history and biology and relations of religion to sciences were in operation with instructions in elocution and military science.

There was also in operation the theological school with several professors, at the present time the following schools are in operation under competent profesors, viz:

School of ethics and evidences of christianity, (Professor Du Bose); school of mathematics, (Professor Gen. E. Kirby-Smith); school of metaphysics, (Professor Rev. F. A. Shoup); school of geology and mineralogy (Professor Cambron Piggott, M. D., and an assistant, W. B. Hall, Jun. M. A.); school of political economy and hostory (Professor Grenough White); school of ancient langiages and literature (Professor B. L. Wiggins, M. A.); W. Guerry, M. A., tutor school of modern law) school of engineering, and physics, school of English literature, school of military science and tactics, microscopy, book-keeping, commercial law, elocution and stenography.

85. Give the names and the rank of the professors who now and from time to time have occupied the chairs of the university and the

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names and rank of those who deliver lectures to the students during the year, and in answer to this question you will give the beginning and ending of each term and the reason for it?

(Excepted to as irrelevant.)

A. To the eighhty-fifth dicect interrogatory witness saith:

The following are the names and rank of professoors who have, from time to time, occupied the chairs of the university, and the names and rank of those who have delivered lectures to students:

Rev. F. L. Knight, D. D., ancient languages; Prof. Rob't Dabney, M. A., LL. D., chair metaphysiciacs and English literature; Gen. Josiah Gorgas, headmaster, Vice-Chancellor, and professor of natural science; Prof. Gaskie Harrison, A. M., professor of ancient languages; Prof. E. L. C. Minor, professor of Latin languages; Prof. John B. Elliott, professor of chemistry, geology, and mineralogy; Prof. F. A. Juny, D. D., professor of modern languages; Col. H. Schaller, professor of modern languages; Prof. John McGrady, professor of biology and relations of religion and science; Prof. R. Tallichet, professor of modern languages; Prof. R. E. Nelson, professor of engineering and physics; Assisstant-Professor G. B. Green, professor of mathematics; Prof. Thomas Williamson, professof of Latin language; Prof. Geo. T. Wilmer, D. D., metaphysics and English literature. All of *All of* the above-named have ceased to be
143 connected with the university. The present faculty with their respectove cnairs is as follows:

Theologival facul-y, Rev. Telfair Hodgson, D. D., Dean, systematic divinity. Reverend —— ——, professor New Testament language and interpretation. Rev. W. F. Du Bose, S. T. D., professor Old Testament langauge and interpretation. Reverend W. F. Du Bose, S. T. D., acting professor ecclesiastical history and church polity. Reverend Thomas Gailor, M. A., S. T. D., professor homiletics and pastoral theology. Reverend Sylvester Clark, professor. Rt. Reverend, John N. Gallagher, D. D., Bishop of Louisiana, Lecturer. Canon law, Reeverend Henry Mason Baum. School of ethics and evidences of christianity, Rev. W. P. Du Bose, D. D., professor. School of mathematics, Gen. E. Kirby-Smith, professor. School of metaphysics, Rev. Shoup, D. D., professor. School of geology and mineralogy, Dr. Piggott, professor, assi-tant, W. B. Hall. School of political exconomy and history, Greenough White, M. A., professor. School of ancient languages, and literature, B. L. Wiggins, M. A., professor. School of ancient languages and literature, M. A. Guerry, M. A., tutor. School of modern languages and literature, F. M. Page, M. A., professor. School of modern languages and literature, W. N. Guthrie, Assistant. School of engineering and physics, Rev. F. A. Shoup, D. D., professor. School of English language and literature, Grenough White, M. A., professor. School of chemistry, Cameron Piggott, M. D., professor. School of chemistry, W. B. Hall, Jr., M. A., assistant. School of military science and tactics, Edmund K. Webster, 1st lieutenant 2nd U. S. Infantry, professor, Commandant of Cadets. Honorary professor in German, French, and Italian languages and literature, Dr. Albert Shafter. Honorary

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professor in microscopy, J. W. S. Arnold, M. A. J. W. Weber, instructor in book-keeping. John Lowry, M. A., instructor in elocution. E. D. Moreno, instructor in stenography.

The lent term, commencing the 17th of March, ends August 4th, 20 weeks. The trinity term begins August 10th, ends December 21st, 20 weeks.

86. State whether or not you were present as a member of the body meeting in Montgomery, Alabama, when the subject of the location of the university and a charter for it were under consideration, and, if you answer that you were, you will then state whether the charter afterwards granted by the State of Tennessee was then drafted by your body and you will state whether the clause exempting its property from taxation wss then in such draft as adopted by your body?

(Excepted to as irrelevant.)

A. To the eighty-sixth direct interrogatory witness saith:

144 I was present as a member of the Board of Trustees at their meeting held in Montgomery, Alabama, in the month of November, 1857, when the subject of the location of the university and a charter for it were under consideration. The committee to prepare a charter had been appointed at the July meeting, 1857, at Look Out Mountain, and consisted of Hon. F. B. Fogg, a distinguished lawyer of Nashville, Tennessee, J. B. Guion, of Louisiana, and J. L. Manning, Esq., of South Carolina, and G. S. Yerger of Mississippi. At the meeting at Montgomery, in November, 1857, Mr. Fogg, from the committee on charter presented a draft of the proposed charter as prepared by the committee. On motion of Bishop Elliott, it was

Resolved, That a committee be appointed to consider and report upon the draft of charter so prepared. The committee was appointed and consisted of bishops, Elliott and Atkinson, Rev. Dr. Curtis, Rev. Dr. Leacock, Mr. Fairbanks (witness), Mr. Pollock, and Mr. Fogg.

The committee, of which I was a member carefully considered the draft of the pr-posed charter and through Bishop Elliott, their chairman, having amended it, in some immaterial particulars, reported it back and recommended its adoption by the Board and say "that so soon as the blank for the name of the university was filled it would be complete and ready to be submitted to the proper legislative body." The proposed charter was then read by sections and adopted without material alteration. A committee was thereupon appointed, consisting of Francis B. Fogg, Esq., and Russell Houston, Esq., to act on behalf of the trustees in procuring the enactment of the charter from the Legislature of Tennessee. The charter afterwards granted by the Legislature of Tennessee was the same charter, a draft of which had been drafted and presented by the committee on charter to the Board of Trustees at Montgomery, and adopted by them. The provision in relation to exemption from taxation was contained in the draft of charter approved at Montgomery.

87. State whether or not the proposed university was then attracting much or little attention in the Southern States, whether its loca-

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tion was esteemed to be a good public benefit to the state securing it, and whether it was understood by your body from the representations of the several states, that any one of the states seeking to have the university located in its border was entirely willing to grant it exemption from taxation?

(Excepted to as irrelevant.)

A. To the eighty-seventh direct interrogatory witness saith:

The proposed university was attracting much attention through the southern states. The subject was discussed and referred
145 to frequently by the newspapers at New Orleans, where Bishop Polk resided and in the other leading papers. The magnitude of its plans and the energy displayed by Bishop Polk in advocating them had drawn public attention to the scheme as the most magnificent enterprise to create in the southern states a university which should rank with the most celebrated institutions of Europe and equal or surpass anything then in existence in this country. The location of such an institution was regar-ed as very desirable and a great public benefit to the state securing it. Assurances were given to the Board of Trustees by representatives from various states that the most liberal charters would be given, if located in any of their respective states. The then as now enterprising city of Atlanta was very anxious to secure the location and when it was understood that the question of location was to be reconsidered at the meeting at Beersheba, in July, 1858, she sent a large delegation of her leading citizens to make very liberal propositions for its location there, with assurances of a most liberal charter and substantial aid.

88. State whether or not your body at Montgomery, Alabama, agreed to establish your university at Sewanee, Tennessee, upon the conditions, among others, that the State would grant the corporation exemption from taxation to the extent stipulated in the draft of the charter adopted by your body and you will state whether or not the charter was accepted by your body at the meeting at Beersheba Springs, and the university located at Sewanee, upon the faith and with the understanding that so long as the university owned its property and prosecuted the object for which it was founded, its property to the extent stipulated should be ex-mpt from taxation?

(Excepted to as irrelevant.)

A. To the eighty-eighth direct interrogatory witness saith:

The Board of Trustees at Montgomery agreed to the location of the university at Sewanee, Tennessee, upon the condition among others, that the State would grant the corporation exemption from taxation to the extent stipulated in the draft of the charter adopted by the Board and in fact made that section in the selection of Sewanee dependent upon obtaining from the Legislature of Tennessee an act of incorporation to the Board, as will be seen by the resolution itself, a copy of which is made a part of my answer in the 16th interrogatory. When the Board met at Beersheba Springs, in July, 1858, the act of incorporation had been obtained, containing the exemption of the lands of the university to the extent of one thousand acres,

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and the charter was formally accepted by the Board of Trus-
146 tees, and the university located at Sewanee, upon the faith and with the distinct understanding that so long as the university owned the lands and prosecuted the object for which it was founded, its property to the extent stipulated should be exempt from taxation.

89. State whether or not exemption from taxation was deemed by your body as a matter of importance and can you say whether as a matter of fact your body would not have accepted a charter from the State of Tennessee and located the university in it, if the State had refused it exemption from taxation?

(Excepted to as irrelevant.)

A. To the eighty-ninth direct interrogatory witness saith:

Exemption from taxation was deemed by the Board of Trustees a matter of great importance and I do not believe that the Board of Trustees would have accepted a charter from the State of Tennessee and located their university at Sewanee, had the State refused such exemption, as it would have been regarded not only as depriving the university of an im-ortant and valuable — but would have indicated an illiberality and want of appreciation of the value of the projected university, which would have weighed upon the minds of the trustees, especially as Huntsville, Alabama, which was regarded with great favor by many of the trustees, had offered a location near that city of 1000 acres and $100,000. in money. And Atlanta had offered to give one thousand acres of valuable land now within the corporate limits of that populous city.

90. State whether or not the proceedings of your body at Montgomery were widely published and well known to the public at the time the Legislature of Tennessee granted the charter, and was it or not, then well known by the public that the university was to be located in Tennessee, on the condition the State granted the charter your body adopted at Montgomery?

(Excepted to as irrelevant.)

A. To the ninetieth direct interrogatory witness saith:

The subject of the location of the university was regarded as of great importance by the public and the meeting at Montgomery attracted great attention. The Board of Trustess, in order to give as wide publicity as possible to their decision ordered two thousand copies of the proceedings of the meeting, with the report of the committee on location to be published, and it was well known to the public at the time the legislature granted the charter which the Board had adopted at Montgomery. This was clearly to be
147 inferred from the action of the Board upon the proposed charter and the resolution for a location at Sewanee, provided that an act of incorporation acceptable to the Board could be obtained from the legislature of Tennessee.

91. State whether or not immediately after the grant of the charter and title to the lands was acquired, the one-thousand-acres were set ap-rt; and you will then say whether or not from that time to the

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present, the agents and officers of the university have solic-ted and obtained subscriptions to the university upon the faith of the representation that its lands were exempt from taxation to the extent of one thousand acres and all of its personal property and would become valuable and a source of revenue to the university and that adequate present help would start the university upon a permanent course?

(Excepted to as irrelevant.)

A. To the ninety-first direct interrogatory witness saith:

That immediately after the grant of the charter and titles to the lands was acquired the one thousand acres, which were to be exempt from taxation were set apart and selected, and from that time to the present agents and officers of the university have solic-ted and obtained subscriptions to the university, according to the best of his knowledge and belief, upon the faith of and evidence afforded by the charter of its lands being exempt from taxation to the extent of 1000 acres and all its personal property. That its exempt property would become valuable and a source of revenue to the university and that adequate present help would start the university upon a permanent career. The two commissioners, Bishops Polk and Elliott, who were appointed by the Board of Trustees commissioners to canvass the southern states to raise the endowment had printed and widely circulated an address dated at New Orleans, February 24th, 1859, signed by them, urging subscriptions to the university and printed as appendix to their address, the full text of the charter of the university, in order that the donors might have before them the certified charter of its privileges and exemptions. The Board of Trustees ordered two thousand copies of their proceedings, held at Beersheba, in July, 1858, at which time and place the charter was accepted, to be published with a certified copy of the charter printed as an appendix.

92. State whether or not one of the difficulties encountered was a continual fear that the university would fail for want of means and you will say whether or not the advantages of exemption from taxation and the probable income from the exempted real estate were urged as reasons why the university would be able to sustain itself?

148 (Excepted to as irrelevant.)

A. To the ninety-second direct i-terrogatory witness saith:

To establish a university worthy of the name, it is self-evident that there must be a large endowment from some source, or very considerable state aid. The trustees of the university determined at the outset to obtain $500,000. before commencing and an endowment of three millions to sustain it. But for the civil war they would have soon had these sums. At the close of the war the South was bankrupt and the university had to be abandoned or the work begun under great pressure of difficulties. The advantage of the exemption was an encouragement and a help to make the effort to save our domain and to begin work of resuscitation. Exemption for taxation and the probable income from the exempted real estate were urged

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as reasons for putting the university in operation and sustaining it until it derived revenue from this source. In a report made by me seventeen years ago, just after the school was started, I reported to the Trustees "I am satisfied that a judicious management of our real estate will in a few years produce a very considerable revenue and eventually a large endowment for the university."

93. State the annual contributions by individuals to the university since the close of the war?

A. To the ninety-third direct interrogatory witness saith:

The anual contributions to the university since the close of the war have been stated in detail for each year in my answers to the 53d, 55th, and 67th direct interrogatories. I have included all gifts and donations, whether by churches or individuals, and also the amount of money received from England through Bishop Quintard and also all money, legacies. Also the money received from southern sources in 1867. The aggregate sum received is about $130,00-. The amount given in the shape of special donations for buildings since 1867 is about $79,000.

94. State about how much has been expended altogether for educational buildings, for boarding houses, chapels, etc., since the grant of the charter?

A. To the ninety-fourth direct interrogatory witness saith:

That about $120,000. has been expended for educational buildings, chapels, and boarding houses, by or for the university.

95. State about how much has been paid out to professors, officers, and agents of the university since the grant of the charter?

A. To the ninety-fifth direct interrogatory witness saith:

That there has been paid for salaries to professors, officers, and agents of the university, since the grant of the charter $275,000.

96. State how much has been paid out by it to acquire tiele
149 to its lands, survey, map and improve them, in laying out and building roads, streets, bridges, and all other expenses incident to their care, improvement and adornment, but not estimating the fencing and buildings on them?

A. To the ninety-sixth direct interrogatory witness saith:

There has been paid out in acquiring title to lands, surveying, mapping, and improving them, in laying out and building roads, streets, bridges, and the like, and all other expenses incident to their care and adornment and improvement, as near as I can estimate, the sum of fifteen thousand dollars, having paid for lands alone $8,000.

97. State whether or not the bishops and clergy of the south have done much or little to sustain the university and if you say they have done much, say what the result would have been had they withheld their active support?

A. To the ninety-seventh direct interrogatory witness saith:

The bishops and clergy of the Episcopal Church in the Southern States have done a great deal to sustain the university; without their active support the university would have failed to be re-established or sustained.

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98. What is the present income of the university from all sources, not estimating expected bequests and donations?

A. To the ninety-eighth direct interrogatory witness saith:

The present income of the university from all sources, not estimating expected bequests and donations is about the sum of $22,943., not including the sum of $4,000. expected to be raised by the dioceses for the theological department.

99. What is its present expenditure for all purposes?

A. To the ninety-ninth direct interrogatory witness saith:

The pre-ent expenditure of the university for all purposes is about $22,382.04, not including $4,500. for salaries of the theological department.

100. What sum will it require to erect additional educational buildings and equip the university in such manner as to have it meet the standard contemplated by its founders? What income is it essential the university should have to place it on such footing as to have it meet the measures of usefulness proposed by its projectors?

A. To the one hundredth direct interrogatory witness saith:

To erect aditional buildings and equip the university in such manner as to have it meet the standard contemplated by its founders, would require additional expenditure of not less than five
150 hundred thousand dollars and to carry out the plans of the founders of the university, establish and maintain its thirty-three schools, on the scale they contemplated, would require an income of not less — two hundred and fifty thousand dollars.

101. What effect does the rate of tuition that the university is now compelled to charge have upon the number of students attending it?

A. To the one hundred and first direct interrogatory witness saith:

The rate of tuition the university is now compelled to charge has undoubtedly an influence in greatly diminishing the number of students attending it. If these rates could be reduced or abolished, it would receive a very great increase. As it is, in all meritorious cases, where, as is often the case, the circumstances of the student do not admit of his paying full tuition, a considerable reduction is made in order to keep him and there have always been a considerable number of students, probably as large a proportion as one-fourth, who paid no tuition, mainly because unable to do so.

102. Give the beginning and the end of each term and say what effect it has on the population of Sewanee, and in this connection you will say how the winter population of Sewanee compares with its summer population, and the extent of the business at Sewanee during the winter months when the university is closed?

A. To the one hundred and second direct interrogatory witness saith:

The first or lent term of the university opens on the 18th of March, and trinity or second term on the tenth of August and ends December 23d, each term being of twenty weeks duration. The long vacation being given for twelve weeks from the 23d of December. So that the university is not in operation from Christmas until near the end of March. This suspension of the operation of

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the university during the winter months creates a general exodus of the population during those months. The winter population of Sewanee — than during the summer season. The hotel and boarding houses are closed and most of the families close their houses and go elsewhere.

103. As a general rule during what season of the year do the occupants of residences at Sewanee occupy them; and if you answer that many of them occupy them during the summer months only, say what proportion and what effect, if any, the fact that residences at Sewanee are desirable only for a part of the year, has upon their money value?

A. To the one hundred and third direct interrogatory witness saith:

As a general rule, the occupants of residences at Sewanee occupy them during the period the school is in operation, say from
151 the first of April to the middle of December, many families however, remain at Sewanee only from June to November. The summer visitors seldom come earlier than the middle of June and mostly leave by the first of October. The winter season at Sewanee is too cold and severe to make it desirable to reside there at that season. This renders the residences of less money value than they would be if desirable as a home through the whole year.

104. What is the extent of business done at Sewanee during the winter? What is its population during the winter vacation?

A. To the one hundred and fourth direct interrogatory witness saith:

The business done at Sewanee in the winter, from what I can learn, is not more than one-fourth what it is during the summer months. During the winter vacation about all the students are gone. The professors generally go away somewhere to spend the winter months. The visitors are all gone and very few people are left of those connected with the university.

105. What products, if any, are shipped away from its depot? If Franklin County or its citizens offered to build a turnpike road to Sewanee, or to pay for any lands for it, say what was agreed to be done, whether it was done, and if you had any records upon those points, give them?

A. To the one hundred and fifth direct interrogatory witness saith:

Tan bark is the only product that I know of that is shipped from the depot. In the year 1860 a project was set on foot to have a good turnpike road from the university to Winchester and from the university to Hockerville, according to my recollection, strengthened by an examination of the records of the executive committee, of which I was a member, a charter was obtained by Franklin County for this purpose and a division was obtained in the charter to enable the turnpike company to purchase land and to extinguish any claims interfering with the university land. I find the following memorandum in reference thereto made in the record of the executive commit-ee of July 19th, 1880:

"On motion resolved, That the commissioners be authorized to raise the sum of $4,500, to extinguish Sheperd title to the Sheperd

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tract, to be refunded out of the funds of the university until the people of Franklin County shall raise said amount under the authority of their charter for constructing a turnpike to the university and which they are pledged to do by their original agreement."

My recollection is that such charter was secured, but before anything could be done, the civil war came on and nothing
152 further was ever done.

I know that Col. Barney surveyed the line of such turnpike down the side of the mountain and a considerable distance in the valley towards Winchester.

106. What is the esterior boundary of the lands of the university in miles?

A. To the one hundred and sixth direct interrogatory witness saith:

The exterior boundary line of the university lands is upwards of twenty miles in extent.

107. Can you state as a fact that the professors now and heretofore connected with the university have accepted less salaries from it than offered elsewhere in order to sustain the university?

A. To the one hundred and seventh direct interrogatory witness saith:

I know that some of the professors now and heretofore connected with the university have declined positions with higher salaries offered elsewhere in order to sustain the university and promote its progress.

108. From whence does Sewanee derive its supplies? If any part of the mountain say what it is?

A. To the one hundred and eighth direct interrogatory witness saith:

The university population derives its supplies very largely from the *from the* adjacent farmers of the County of Franklin, living in the valley. Hardly anything from the lands of the mountains.

109. State whether or not the State and County, both from the time your charter was granted, have recognized the property now sought to be taxed as exempt and state when an *amount* (Sic) for taxes was first made.

A. To the one hundred and ninth direct interrogatory witness saith:

The State and Count- have by their action recognized the properties now sought to be taxed as exempt from taxation ever since the charter was granted to the university in 1858, up to the present year, when, for the first time a demand was made for taxes upon such exempt property.

GEO. R. FAIRBANKS.

Sworn to and subscribed before me this November 24, 1887.

FRED W. HOWARD,
Notary Public.

For the State I waive the fact that the answer of the State has not been filed on the condition that a statement is officially filed, showing

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the number of cases granted, and to whom, and the terms on which they were granted, as now appears in the record of the corporation.

To formulate same I propound the following cross-interrogatories:

1. Set out the general contract of lease that has been estab-
153 lished for the leasing of the lots of the university?

A. To the first cross-interrogatory propounded on the part of the State witness saith:

The general form of lease in use for leasing lots is in the following form:

Memorandum of an agreement made this — day of ——, A. D., — between the University of the South, party of the first part, ——, party of the second part; Witnesseth that the said party of the first part doth hereby leases to the said party of the second part all that certain lot and premises, situated at Sewanee, Franklin County, Tennessee, being part of the domain of the said university of the South and described as follows:

for a period — years, from said date, at an annual rental of —— dollars per year, payable each year in advance, and this lease being expressly made subject to the provisions of the charter, constitution and statutes of said University of the South, as well also to the regulations for leasing the domain of said University of the South, established by the Board of Trustees. And the said party of the sec-nd part agrees with the said party of the first part that — will pay the rent above specified in manner aforesaid, and all taxes and assessments upon said premises; —— doth further covenant and agree that during the said term hereby granted — will not, nor shall — heirs or assigns, sell or permit to be sold upon said premises hereby leased, any ale, beer, wine or any liquors whatever; nor allow any gambling of any description upon said premises; nor allow to be kept therein any billiard table, shooting gallery, or bowling alley, unless permission to keep the same shall have been given by the Commissioner of Buildings and Lands; nor suffer any business to be carried on injurious to the interests of the university; nor permit the erection thereon of any church, chapel or place of religious worship, without the consent in writing of the said University of the South.

And it is further agreed That the said premises shall not be sublet nor this lease assigned without the consent in writing of the Commissioner of Buildings and Lands. And it is further -ovenanted and agreed that any violation of the above restriction and provisions shall cause this lease to end and determine, with a right to said party of the first part to re-enter upon said premises. And it is further agreed
that in all cases of transfer the University of the South shall
154 have the refusal and at the expiration of the present term, the University of the South shall have the option of taking the premises by paying for all improvements made thereon, or may renew the lease for another term of — years, on such terms as may be agreed upon by the parties, respectively and may also give a second renewal for — years; and in case the parties cannot agree upon the

value of the improvements or the rental to be paid for the new term, the same shall be determined by arbitration, one of the arbiters to be selected by the Commissioner *or* Buildings and Lands and the other by the lessee; and, in case they cannot agree, they shall call in an umpire; provided, however, that in fixing the rental for the new term, the value of improvements shall not be taken into account as ag-inst the said party of the second part, heirs or assigns. And it is further agreed that improvements to the value of —— hundred dollars be made and kept on said premises by the party of the second part.

In witnes- whereof The said parties have hereunto set their hands and seals, the year and day first above written.

——— ———. [L. S.]

For the University of the South.

——— ———. [L. S.]

2. If it does not *five* the number of years the leases are to run, state it from the record?

A. To the 2nd cross-interrogatory propounded on the part of the State witness saith:

The general term for the leasing of the domain is thirty-three years, renewable for two terms. Some leases are granted for a period of ten years only, renewable for ten years each, and a few temporarily yearly leases of eight.

3. State how many have been leased that are not used for the actual purposes of the university?

To the third cross-interrogatory propoun-ed by the State witness saith:

That the number of leases within the one-thousand-acres reservation made to or occupied by persons not connected with the university, its professors, officers, teachers, boarding house keepers, etc., are sixty-three.

4. Does or not said leases embrace lots of which dwelling houses, business houses, selling of groceries, wares, market products, mechanic shops, places of amusement, hotels, boarding houses, stables, and which have been erected for enjoyment or profit?

A. To the fourth cross-interrogatory propounded by the
155 State witness saith:

The latter class of leases embraced in my answer to the preceding interrogatory does embrace lots on which dwelling house, boarding houses, for selling of groceries, market produce, mechanic shops, a hotel, boading houses, stables, etc., but no places of amusement which have been erected for use or profit of their occupants.

5. Has the trustee and assessor correctly set out the number and description of the leases in his assessment?

A. To the fifth cross-interrogatory propounded by the State witness saith:

Not having seen the as-essment of the trustee and assessor I cannot -ay.

6. Set out in full from the record of leases the clauses requiring

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the lessees to pay the taxes, if not in the contract, state its terms as given in the writing or agreement that contains it?

(The official records or the copies of written agreements is all that is wanted, nothing else is asked for). J. J. Williams, Attorney for the State).

A. To the Sixth cross-interrogatory propounded by the State witness saith:

The clause in reference to taxes is set in the form of lease given in answer to the first interrogatory. The requirement respecting taxes is not, however, contained in the regulations respecting leasing the domain adopted by the Board and in force, and was inserted in the leases while witness was Commissioner of Buildings and Lands to cover any assessments which may be made for municipal purposes and out of abundant caution. There is no law or regulation of the University requiring such clause to be inserted.

Cross-Interrogatories Propounded by Franklin County, without waiving objection to Testimony for Incompetency:

1. What is the population of the town of Sewanee, and in this connection, you will please state if it is not true that the whole of the town is built on the 1000 acres of land which the university claims as exempt from taxation?

A. To the first cross-interrogatory propounded on behalf of Franklin County witness saith:

The population of Sewanee, including in that designation the people who live within a mile from the railway station, is probably about seven or eight hundred in the summer months, not including
156 students of the university and summer visitors, but inclusive of residents, who have homes here and spend a part of the year here. It is not true that all of the people that live within a mile of the railway station live within the 100 acres claimed as exempt from taxation, although the larger part do.

2. How much land, I mean the number of acres, does the university own, and, in this connection, pleases state in what manner the 1000 acres claimed to be exempt was set apart, if at al-?

A. To the second cross-interrogatory propounded on behalf of Franklin County, witness saith:

The university owns upwards of seven thousand acres of land. The one thousand acres of land claimed as exempt from taxation was selected at the time the first location was made by the executive committee of the Board of Trustees and surveyed and plainly marked out and the boundaries thereof plainly marked and designated on the map of the university lands, which is considered the official map of the domain.

3. If you have made a statement as to the value of the property sought to be taxed in this cause, please give the name of each lessee, the amount of land each has leased, what kind of building each lot has on it and you will then give the real value of each lot, at a reasonable cash price?

A. To the third cross-interrogatory propounded on behalf of Franklin County, witness saith:

In reply to the 75th direct interrogatory I have given a schedule containing the name of each lessee and the amount of rent, the time of year and the employment and occupation of each lessee and the amount collected for rent. As to the kind of buildings I may say that they are, without exception, frame buildings, except three which are half stone and half frame. The buildings are none of value exceeding five thousand dollars and range from that down to two hundred dollars and less. As to the cash value of each lot, I am unable to say, because no lots have ever been or can be sold cher-, and because of the peculiar condition of the tenure of lots here, being all leased upon the ground rent for a long term of years with very restrictive conditions subject to forfeiture in case of a violation of the lease, not transferrible without the consent of a particular officer of the University, being occupied mostly as summer residences, the rents ranging according to the position of the lessee and the term of years the lease is taken for. I do not know any other approximate rule of valuation than that of computing what sum the amount paid for each lot represents the interest of at six per cent. and then assuming that such rule of valuation represents value of unre-
157 stricted, unconditioned and free tenure, deducting from that a percentage for the peculiar tenure on which the leases are held, which, I think, should be, at least, fifty per cent. less than for property held by an ordinary lease.

4. Does not every lease provide for the payment of taxes by the lessee?

A. To the fourth cross-interrogatory propounded by the County of Franklin witness saith:

I have fully stated everything connected with this interrogatory in reply to the first cross-interrpgatory on the part of the State.

5. Has any person whatsoever ever put any private capital into the university except as a donation, if so, who, and how much, and in what manner?

A. To the fifth cross-interrogatory propounded on behalf of the County of Franklin witness saith:

I do not know that I understand this interrogatory, but, supposing that it means the educational institution known as the University of the South, I answer that whatever capital, or donations, or funds, or buildings have been given for the building up of the university and sustaining it, have been given it as a donation. Private individuals have their own capital in improvements upon leased lots for their own use and advantage or occupation.

6. Is it not true that the University of the South is in splendid condition financially, and is it not true that, it is now building two very handsome buildings for University purposes, one of them a gymnasium, at a cost of about fifty thousand dollars; and, generally, is not the university in a prosperous condition, financially?

A. To the sixth cross-interrogatory, propounded by the County of Franklin, witness saith:

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It is not true that the University of the South is in a splendid condition financially. On the contrary, it owes a bonded debt of thirty-three thousand dollars, for which all its domain is mortgaged and on which it is paying interest at the rate of six per cent. and for the payment of which interest the rents received upon all the leases is specially pledged and devoted. It has no endowment and is dependent upon the money received for tuition to pay its professors, and officers and current expenses. And it is difficult to get through the year without incurring debt. It is true that it is now erecting a building called the Gymnasium and Convocation Hall, which is expected, with the tower attached, to cost twenty-two thou-
158 sand dollars, but every cent of the money being used for *for* the building has been given by a special gift for the purpose by friends of the university at a distance and not a cent of the moneys earned from tuition, or received for rent, has been, or can be, applied to those buildings. Generally speaking, the university, although prosperous in the sense of numbers and progress, is not in a prosperous financial condition, although it is in a better condition than for some years past.

7. How much money, first and last, has been given to the university since its inception?

A. To the seventh cross-interrogatory propounded on behalf of the County of Franklin, witness saith:

That, as near as he can ascertain, the university has received, before and since the war, about one hundred and forty-eight thousand dollars.

8. Doesn't the university carry on its affairs in grand style and much éclat, drawing its patronage from among the sons of southern aristocrats almost entirely?

A. To the eighth cross-interrogatory, propounded by the County of Franklin, witness saith:

The university aims to comp-rt itself in such manner as to command respect, and to reflect credit upon itself, and upon the state in which it is located and to commend itself to the good opinion of those who look upon every effort for supplying a liberal and advanced education, with sympathy and regard. A prominent Presbyterian has given public expression to his opinion of the university, in the following extract, which I give, from a letter furnished by him to a secular paper:

"The exercises of Commencement week at the University, ending Thursday, July 31st, were very interesting and highly creditable to the mental, physical, and the moral frame of the young men, afforded by the excellent system and the work at Sewanee. To an outsider attending these exercises, after seeing the very beautiful, secluded and helpful location of the University of the South, and convinced of its thoroughness, that the Church, whose vital interest it represents, can be justly proud of this excellent institution and should endow and sustain it with its united strength. What Princeton, Howard Collard (sic) is for Baptist friends and Vanderbilt and his southern university for Methodists, such should this admirable

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University of the South become, as a future Mecca for the Episcopalian of all the southern states and indeed for the United States.

And also the published opinion of Rev. Morgan Dix, D. D.:

159 "I wish to add a few words by way of conclusion. First, then, churchmen ought to know what a work is in progress on Sewanee Mountain; Secondly, they should lay it to heart that this has been accomplished without one dollar by way of endowment, and that it could not have been done at all, but for the devotion and self-sacrifice of a rare body of men and women. It is almost incredible that so much could have been accomplished in a little more than ten years."

The students of the university are drawn from all ranks and walks of life; they represent all the southern states and are fairly representative of that class of our people, who desire to secure to their children the benefits of a good education. Of the number of students, who have been in attendance on the university, since its establishment, fully one-fourth have been educated free of tuition. The youth educated at Sewanee represent no class and no rank of society, but do fairly represent the people and the society of the South.

(Dr. Dix is the well-known rector of Trinity Church, N. Y.)

9. How many teachers have you got in your school anyhow?

A. To the ninth cross-interrogatory on the part of Franklin County, witness saith:

To the question how many teachers have you got in your school anyhow, that there — eleven full professors, and five assistants in the university department. One head master and five assistants in the grammar school, making twenty-one persons engaged in teaching in the various departments of the university. There are also several lecturers engaged in delivering courses of lectures during the summer months.

10. How much wages do you pay them?

A. To the tenth cross-interrogatory on the part of Franklin County, witness saith:

The amount paid for all salaried to the persons engaged in teaching during the past year was the sum of $17,987.46. The estimate of salaries and school expenses to be paid during the coming year is twenty-four thousand three hundred and eighty-one dollars.

11. Who is the spelling teacher in your school and where did you learn to spell?

A. To the eleventh cross-interrogatory on the part of Franklin county, witness saith:

By the regulation of the university, applicants for admission to the grammar school of the university must be able to spell, read and write, and be well grounded in arithmetic, and have some

160 knowledge of geography and history. Spelling is taught to the younger students in the grammar school, by the assistants in that school.

12. How many charity students has the university educated since it started up, outside of Episcopal preachers?

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A. To the twelfth cross-interrogatory propounded on the part of the County of Franklin, witness saith:

By a resolution of the Board free tuition was authorized to be given to two boys, sons of Confederate dead in each diocese, who cannot afford to pay full charge, who were to be charged only seventy-five dollars for board and all fees remitted. In the following year, it was provided that, if there were no such Confederate orphans any diocese might send two other boys instead, free of university charges. Under this rule, there is free tuition permanently given to some twenty-six students annually. By another resolution of the Board, the sons of the teachers and officers of the university are educated free of charge and the sons of the clergy in the diocese connected with the university, at half rates. None of the students in the theological departments pay any tuition. Special and very low rates, almost amounting to free tuition, have been made for students from Franklin County, who have been always gladly received upon any terms which they could afford. Liberal deductions, and in many cases, free tuition, is given to deserving applicants who gave promise of good scholarship. The books of the university show that 69 students are receiving free tuition, of whom only ten are looking to the ministry; 39 pay only half rates; 2 pay only quarter rates. No Franklin County boy has ever been charged over fifteen dollars per term, with two or three exceptions.

13. How many pu-ils has the university had in attendance annually, say for the last four years, and how much do you charge for teaching them?

A. To the thirteenth cross-interrogatory, propounded by the County of Franklin, witness saith:

The following table will show the number of students in attendance and the states they were residents of, for the last four years:

1883-4.

Students in Attendance, 182.

Residence.

Alabama	16	Massachusetts	2
Arkansas	3	Mississippi	17
California	2	North Carolina	5
England	2	South Carolina	18
Florida	10	Tennessee	23
	161		
Georgia	10	Texas	23
Indiana	1	Virginia	7
Kentucky	13	District of Columbia	1
Louisiana	19	Missouri	1

1884-5.

Students in Attendance, 229.

Alabama	23	Mississippi	25
Arkansas	2	Massachusetts	1
California	1	North Carolina	2
England	2	South Carolina	15
Florida	19	Tennessee	47
Georgia	20	Texas	32
Indiana	1	Virginia	6
Kentucky	11	Missouri	3
Louisiana	10	Minnesota	1
Ohio	2	New Jersey	1
New York	2	Delaware	1
Pennsylvania	2		

1885-6.

Students in Attendance, 261.

Alabama	32	Michigan	2
Arkansas	2	Mississippi	26
England	2	North Carolina	2
Florida	19	South Carolina	13
Georgia	13	Tennessee	63
Indiana	1	Texas	43
Kentucky	9	Virginia	4
Louisiana	19	Kansas	1
Ohio	1	New Jersey	2
Pennsylvania	3	Maryland	1
Massachusetts	2		

1886-7.

Students in Attendance, 301.

Canada	1	Pennsylvania	2
Alabama	18	Mississippi	18
Arkansas	3	Massachusetts	2
England	1	North Carolina	2
Florida	31	South Carolina	21

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Georgia	8	Tennessee	86
Indiana	2	Texas	50
Kentucky	12	Virginia	3
Louisiana	26	New York	2
Mexico	1	Scotland	2
Michigan	2	Ireland	2
Nova Scotia	1	Montana	1
Ohio	1	Wisconsin	1
California	1		

14. How many Franklin County boys have been educated by the University of the South?

A. To the fourteenth cross-interrogatory propounded on behalf of Franklin County witness saith:

From an inspection of the register of students, I find that from September 18, 1868, to October 19, 1887, eighty students from Franklin County have attended the university and about thirty students from Franklin County were in attendance during the last collegiate year and probably as many more now.

15. State what the annual expense of your school is and in what does it consist? Give an itemized statement for th- last four years?

A. To the fifteenth cross-interrogatory propounded by the County of Franklin witness saith:

The expense of carrying on the educational work of the university during the year, 1876-7, was $17,987.46, exclusive of the board of students and of the expenditure on buildings and improvements. The estimated expenses of the year 1887-8, for carrying on the educational work of the university, exclusive of the board of students and improvements on buildings, will be about $24,381.15. The item of the expenditure made in 1886-7 is as follows:

Salaries, professors, teachers, & officers academic department	$13,063.79
Salaries, professors, theological department, provided from contributions of dioceses	2,902.28
Expenses in account janitor, servants, fuel, light stationery, advertising, etc.	2,021.88
Total	$17,987.46

The estimated expenses for 1887-8 are

Salaries academic department	$17,881.15
Theological department, to be supplied, from contributions of dioceses	4,500.00
Expenses account, janitor, servants, fuel, lights, etc.	2,000.00
Total	$24,381.15

163 The salaries of all the profes-ors except one are per year	$15,000.00
One progessor at	1,000.00
Master Grammar School	1,500.00
First Assistant	1,000.00
One Assistant	600.00
Four Assistants	500.00

16. How much money has been given to the university within the past ten years?

A. To the sixteenth cross-interrogatory propounded by Franklin County witness saith:

The sum of $52,259.00, which includes the support of the theological department. About $70,000.00 has been given for buildings.

17. What was Bishop Qunitard's expense account when he went on his begging trip and how much stuff did he bring back?

A. To the seventeenth cross-interrogatory propounded by Franklin County witness saith:

That he does not know what Bishop Quintard's expenses were. The sum of money received from England as the direct result of his appeal was about $10,000.00 and a subsequent visit in 1876, resulted in a gift of funds to the amount of $36,000 for the erection of St. Luke's Memorial Hall for the theological department and library and a scholarship fund of $5,000.00, to be devoted to the support of the theological students.

18. How many thousand acres of land does the University of the South own and who give it the land or was it all given, if not, what amount of land was given it and what amount did it pay for?

A. To the eighteenth cross-interrogatory propounded by Franklin County witness saith:

The university owns upward of seven thousand acres of land upon which it has been obliged to pay in order to extinguish claims of title set up by other parties, the sum of $8,000.

It was originally intended that all the lands the university derived should be obtained for it without expense, by the citizens of Franklin County and such were the assurances given at the time of the -ocation, when they were expressly desirous that the university should be located in said county and since the location of the university, it has been obliged to pay from funds donated by citizens of other states the above sum of eight thousand dollars to obtain a *le* clear title to such lands, a sum exceeding the original value of all their lands, before their location upon them. The lands which they did not pay cash for, were deeded, "In consideration of benefit to be received by the location of the University of the South in Franklin County, Tennessee." The Sewanee Mining Company, the
164 owners and members of which were non-residents of Franklin County, conveyed to the said university five thousand acres of land, "In consideration of the premises and of the benefit to be derived from the location of said university on or near the line of railroad of said Sewanee Mining Company."

The Sewanee Mining Company also stipulated to grant to the university the privilege to cut pine timber on their other property, after the exhaustion of pine on the lands donated, to the amounf of 1,000,000 feet board measure, also to transport over their railroad up the mountain 20,000 tons of stone or other building material or freight free of charge; also to give to the university 2,000 tons of coal within ten years. Not one of these stipulations has ever been discharged. Of the lands owned by the university, every conveyance expressed some consideration, as before stated, the consideration being either the benefits to be received from the location of the university in Franklin County, or, as in the case of the Sewanee Mining Company, the benefits to be received by the location of the university on their line of railroad. The Sewanee Mining Company, from whom con-

veyance was received for the la-ger portion of the lands owned by the university, also made their deed conditioned upon the university being established within a certain time, and with the condition that the lands should revert, if the location of the university should be changed, or the buildings vacated. They also reserved a right to one-half of the proceeds of half the lands conveyed, if the university should sell the same. It cannot, therefore, be said that the univer*i*sty received any of said lands by gift. The university paid for titles to 2,525 acres the sum of about $8,000.

19. What has it cost in round numbers to erect the school buildings of the university?

BRANANNAN & BANKS,
ESTILL & WHITAKER,
Solicitors for Franklin County.

A. To the nineteenth cross interrogatory propounded by Franklin County, witness saith:

The buildings erected by the university, from the time the -harter was granted to the pr-sent time, have cost about one hundred and twenty thousand dollars. The money expended for those buildings has all been furnished from *l*utside sources. The more valuable of these buildings has been erected as special gifts by various persons residing in England and the United States, but a small propo-tion was given by citizens of Tennessee.

GEORGE R. FAIRBANKS.

Sworn to and subscribed before me this the 24 day of Nov., 1887.
FRED. W. HOWARD,
Notary Public.

165 STATE OF FLORIDA, *Nassau County, ss:*

*G*he foregoing deposition was taken before me as stated in the caption and reduced to writing by E. L. Fairbanks. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties and that I sealed them up and put them in the post office addressed to Clem Arledge, Clerk & Master, Winchester, Tennessee, without being out of my possession or altered after it was taken. Given under my hand this the 24th day of November, 1887.
FRED. W. HAWARD,
Notary Public in and for the State of Florida.

Final Decree.

January Term, 1888.

MONDAY MORNING, *January* 23, 1888.

It being the 4th Monday in said month and the time fixed by law for holding the regular term of the Chancery Court of Franklin County. This morning court met pur-uant to adjournment:

Present Hon. Walter S. Bearden, Chancellor etc., of this 4th Chan-

cery Division of Tennessee, presiding, when the following proceed-i-gs were had, to-wit:

JANUARY 26TH, 1888.

UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee, *et al.*

and

FRANKLIN COUNTY
vs.
UNIVERSITY OF THE SOUTH.

Be it remembered that this cause came on to be heard by the Hon. Walter S. Bearden, Chancellor, upon the pleadings, exhibits and evidence and upon the whole *a* case, the court is of opinion that and so decrees that the University of the South is not entitled to any exemption from taxation for the one thousand acres as insisted upon by the said University of the South, except to the extent of so many of the lots assessed which are occupied by the officers, trustees, professors, and agents of the said university, and that all other lots upon said 1000 acres are subject to taxation.

As to so many of said lots as are determined to be liable to taxation by this decree, the bill is dismissed and the injunction is dissolved as to so many of them as are not subject to taxation as herein decreed the injunction is made perpetual.

Upon the hearing defendants insisted upon their objection to the testimony of Geo. R. Fairbanks which objections were disallowed by the court.

From this decree the University of the South appeals from
166 so much of this decree as dismisses its bill and declares said one thousand acres not exempt from taxation, and the defendants appeal from so much of this decree as declares the lots occupied by the officers, trustees, professors and the agents of the university are exempt from taxation, and both parties having executed appeal bonds, said appeals are granted.

The court was further of opinion that the County of Franklin is entitled to recover the amount of the taxes due on the property held subject to taxation under its original bill in the nature of a cross-bill filed in the cause for that purpose and so orders and decrees and the cause is referred to the master to ascertain the property held by him subject to taxation and to ascertain if the assessment made by A. J. Skidmore, Trustee, was made upon the basis of the cash value of the property.

From so much of the decree as orders a reference to ascertain if the assessment was correctly made the county appeals and the University of the South appeals from so much of the decree as directs such reference and it appearing to the court that this decree settles the rights of the parties, the appeal is granted now.

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Appeal Bond.

We, University of the South, principal, and A. S. Marks, security, acknowledge ourselves indebted to the State of Tennessee and Franklin County — two hundred and fifty dollars, to be void on condition that said University of the South shall successfully prosecute an appeal bond in the nature of a writ of error to the next term of the Supreme Court of Tennessee at Nashville, by him prayed from a judgment rendered against him in favor of the said State of Tennessee and Franklin County, in the Chancery Court of Franklin County, on the 26th day of January, 1888, for the sum of —— dollars, debt and damages and also cost of suit, or in case of failure to do so, pay and satisfy said debt, and damages and costs and perform and satisfy the judgment of the Supreme Court in the premises.

UNIVERSITY OF THE SOUTH,
By Attorney, ALBERT S. MARKS.
MARKS & GREGORY, *Solicitors.*

Appeal Bond of the Defendant.

We, Franklin County, acknowledge ourselves indebted to the University of the South in the sum of two hundred and fifty dollars, to be void on condition that the said Franklin County shall successfully prosecute an appeal in the nature of a writ of error to the next term of the Supreme Court of Tennessee at Nashville, by him prayed from a judgment rendered against him in favor of said Uni-
167 versity of the South, in the Chancery Court of Franklin County, on the 26th day of January, 1888, for the sum of —— dollars debt and damages and also cost of suit, or in case of failure to do so, pay and satisfy said debt and damages and costs and perform and satisfy the judgment of the Supreme Court in the premises.

FRANKLIN COUNTY,
By ESTILL & WHITAKER, *Attorneys.*
ESTILL & WHITAKER.
BRANNAN & BANKS.

Bill of Costs.

State and County Tax.....		$5.00
W. A. Gibson, Witness, 2 days and 18 miles...		3.92
A. J. Skidmore, " 1 "		1.00
Floyd Estill, " 1 "		1.00
D. S. & W. H. Maxey, ext'y sub.....	.25	
" " " " " " for witness	.25	
	——	.50
W. L. Myers, Witness, 1 day and 20 miles...		2.00
C. & M. filing bill 25, cost, 25.....	.50	
" " " Injunction bond.....	.50	

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" " "	copying bill	5.00
" " "	spar. to answer	.75
" " "	injunction	1.00
" " "	filing answer 25, notices 25	.50
" " "	taking 3 depositions	3.00
" " "	filing exhibit	.25
" " "	filing demurrer	.25
" " "	and notice	.25
" " "	filing deposition	....
" " "	ess'y sub. for one witness	.10
" " "	taking depositions	1.00
" " "	for one witness	.10
" " "	judg't 75, cost & copy 50-20, rules 2.00	3.25
" " "	2 dockets 20, decree 50, appeal 75	1.45
		18.15
		$31.57
Transcript, $23.00, seal, 50 & certificate		23.75
		$55.32

Clerk & Master's Certificate.

I, Clem Arledge, Clerk & Master of the Chancery Court at Winchester, do hereby certify that the foregoing is a true and perfect transcript of the record in the case of the University of the
168 South against A. J. Skidmore, Trustee, and Franklin County against the University of the South, as appears of record now on file in my office.

Given under my hand and seal of office, this February 3d, 1888.

[Chancery Court Seal, Franklin County, Tenn.]

CLEM ARLEDGE, *C. & M.*,
By S. L. ARLEDGE, *D. C. & M.*

STATE OF TENNESSEE:

Be it remembered that at a Court of Errors and Appeals begun and held at the Capital, in the City of Nashville, for the Middle Division of the State of Tennessee, on the first Monday of December, 1888, it being the third day of December, 1888.

Present and presiding the Honorable Chief Justice, Peter Turney, and Associate Justices, W. C. Caldwell, H. H. Lurton, and D. L. Snodgrass, when the following proceedings were had, to-wit:

FRIDAY, *December* 21, 1888.

Court met pursuant to adjournment, present the Honorable Peter Turney, Chief Justice, and Associate Justices, W. C. Caldwell, H. H.

Lurton, W. C. Folks, and D. L. Snodgrass, when the following proceedings were had, to-wit:

No. 16. Franklin County. Equity.

THE UNIVERSITY OF THE SOUTH
vs.
A. J. SKIDMORE, Trustee, and FRANKLIN COUNTY.

and

FRANKLIN COUNTY
vs.
THE UNIVERSITY OF THE SOUTH.

Be it remembered that this cause came on to be heard by the Supreme Court at Nashville, upon a transcript of the record from the Chancery Court at Winchester, upon the trial of the cause his Honor, Judge Lurton, did not sit, by his request, as he is one of the Board of Trustees of complai-ant, and by consent of both parties; and by consent the Honorable E. H. East was duly commissioned by the Governor as special judge to hear the cause in the stead of Judge Lurton.

It appearing to the Court from the record that, on the 6th of January, 1858, the complainant, the University of the South, was incorporated by the General Assembly of Tennessee and is now and has been, since its incorporation, under the control and patronage of the Protestant Episcopal Church.

It further appeared to the court that the 10th section of
169 complainant's charter is as follows:

"SECTION 10. Be it further enacted: That said University may hold and possess as much land as may be necessary for the building and to such extent as may be sufficient to protect said Institution and students thereof from intrusion of evil-minded persons, who may settle near said Institution, said land, however, not to exceed ten thousand acres. One thousand acres of which, including buildings and other effects, and property of said corporation, shall be exempt from taxation, so long as said land belongs to said University."

It further appeared to the court, that, after complainant's incorporation and acceptance of said charter, it acquired the lands it was empowered by its charter to acquire and that it laid off and designated by metes and bounds the one-thousand acres, as prescribed by its charter, and upon this one-thousand acres, so laid off, and designated, the buildings of the University have been erected, together with professors' houses, etc.

It further appears that a part of this one thousand acres along the line of the railroad has been sub-divided int/ town lots, streets laid off and graded, along these, dwelling houses, store-houses and a hotel have been erected and rented to persons upon leases from one to

thirty-three years and with renewal options given to the tenants, in some instances, making in all three hundred houses and constituting the village of Sewanee.

It further appeared to the court that these lands and the entire property of the corporation were given to it by liberal-minded donors originally, from time to time.

It further appeared to the court that the assessments for taxation complained of in the bill were made and sought to be made upon the one-thousand acres of real estate and improvements so rented or leased, excluding therefrom the university buildings proper and a church, but including the houses of professors, and that with the exclusion named the assessing officers sought to assess said one-thousand acres and the improvements thereon for the current year; and, also, under the special statute of the State, passed 1885, and amended in 1887, empowering "back assessments" for the years, 1884, 1885, and 1886, and that these assessments were, for the year, 1884, $98,710.00; for the year, 1885, $99,360.; for the year, 1886, $105,250.; and for the current year, 1887, about $100,000.

It further appeared that all emoluments and profits arising
170 from said leases, amounting to some twelve or fifteen hundred dollars per year, were used and devoted by the corporation to the purposes of the University and not otherwise.

It further appeared that the University in seeking by these leases to raise an income, endowment or sustention fund with which to carry on the Institution and promote and extend its usefulness as an educational institution, by a judicious use of its real estate and turning both to the institution all incomes and rents so derived to be used for the purposes of the institution and thus make the property contribute to these ends.

It further appeared that defendants insist that the action of the corporation in so leasing its property is a use not contemplated by the Legislature and deprive it of the exemption from taxation which under the tenth section of its charter it would be entitled to.

It further appeared that the chancellor decreed below that the University was not exempted from taxation for the one thousand acres, except to the extent of so many of the lots assessed as were occupied by the officers, trustees, professors and agents of said University, and that all, other lots upon said one thousand acres are subject to taxation and that the chancellor dissolved the injunction as to the one and made it perpetual as to the other and also gave Franklin County a decree against the University upon the same basis.

The court is of opinion that the clause of exemption "One thousand acres of which, including buildings and other effects," "and property of said corporation shall be exempt from taxation," "so long as said land belongs to said University," is plain and free from obscurity and that the Legislature had the undoubted power to make the grant of exemption.

It further appeared that defendants insisted that the one thousand acres would be exempt from taxation so long as it remained as it was at the time the charter was granted, unproductive and standing in

primitive forest, or while used directly in some way in connection with the object of the institution in the training and education of young men.

The court is of opinion and so decrees that the exemption from taxation contained in the 10th section of complainant's charter is not made to depend upon the use to which the one thousand acres might be put, but relates to the title, "so long as said land belongs to said University," and that, while the attention of the Legislature was called to the fact, that the State might, at some time, re-
171 sume the right to tax this property, it stipulated that this right should be resumed, not upon the condition that the University rented or leased the property, or made any lawful use of it, but upon the condition that the University parted with the title; and, that, therefore, the court is of opinion and so decrees, that there is no limitation upon the use of said property which can defeat the exemption.

The court is of opinion and so decrees, that it is the legal and moral duty of complainant so to use this property and all other assets belonging to it as to best promote the ends and purposes for which it was created, and, if by leasing it an income to the University can be created and by this income it is enabled to extend its influence, it is the right and duty of the corporation to do so. Since by these means the property is made to contribute directly to the support of the institution and to subserve the great public purposes for which it was created and upon the whole case the court decrees that said exemption is valid; that it must continue until the University parts with its title; that the University has the right and that it is its duty to use the property in any lawful manner it may choose in the promotion of the objects of its incorporation and that neither the State nor the County of Franklin have the right to tax said property because of such use.

It is, therefore, decreed by the court, that the decree of the chancellor be reversed; that all of said assessments are void because said property was exempt from taxation for State and County purposes, so long as said property belongs to the University; that the injunction against A. J. Skidmore, Trustee, be re-instated and hereby made perpetual. That the bill of Franklin County be dismissed.

That the defendant, A. J. Skidmore, and the County of Franklin and the sureties on Franklin County's bond pay all the costs of this cause, for which an execution will issue.

Office of the Clerk of the Supreme Court for the Middle Division of Tennessee.

I, Joe J. Roach, clerk of said court, do hereby certify that the foregoing is a true, perfect and complete copy of the decree of said court, pronounced at its December term, 1888, in the case of University of the South against A. J. Skidmore, Trustee, as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the

seal of the court, at office in the Capitol, at Nashville, on this the 30th day of August, 1906.

JOE J. ROACH, *Clerk.*

(*Fiat Justitia Ruat Cælum.*)

172 (Supreme Court at Nashville.)

The following stipulation appears at the foot of said transcript and decree, to-wit:

It is hereby agreed that the above and foregoing is a true and correct copy of the original transcript and decree in the case of University *vs.* Skidmore *et al.* etc., This Oct. 11, 1906.

SPEARS AND LYNCH,
CROWNOVER AND CRABTREE,
W. L. MYERS, *For University.*
LYNCH AND PHILLIPS,
For Defendants.

The foregoing transcript and decree are endorsed: Filed Oct. 11, 1906, H. M. Doak, Clerk.

173 The deposition of B. L. Wiggin, taken on behalf of complainants was filed, to-wit:

3481. Equity.

UNIVERSITY OF THE SOUTH ET AL.
vs.
JAMES R. JETTON and Others.

The Deposition of B. L. Wiggins, Taken by Consent of Counsel at Sewanee, Tennessee, on March 9th, 1907.

Present, Capt. Albert T. McNeal, W. L. Myers, and J. J. Lynch, representing the complainant; Arthur Crownover, Felix G. Lynch, and I. G. Phillips, representing the defendants.

Said deposition taken on behalf of complainant used as evidence in the case on trial; caption, certificate and all formalities waived.

Dr. WIGGINS, having been called and duly sworn was examined by Mr. J. J. Lynch, as follows:

1. Where do you live?
A. Sewanee, Tennessee.
2. How long have you lived at that place?
A. Thirty years this coming July.
3. How long have you been connected with the University of the South?
A. A student for four years, an instructor for two, professor of Greek 1882-1903, and Vice-Chancellor from 1893 to the present date, a perdiod of thirty years.

COPY BOUND

4. State whether or not the Vice-chancelor is the chief executive of this institution?

A. He is *ex officio* president of the corporation.

5. Have you not charge of the business af-airs of the corporation?

A. I have.

6. Have you examined the deposition of Major G. B. Fairbanks taken in the case of the University of the South against A. J. Skidmore, trustee and Franklin County against the University of the South, in the Chancery Court at Winchester, Tennessee, and which record has been filed in this cause?

A. I have read it very carefully.

7. I will ask you if the University of the South is now and has it continued to be since the said deposition was taken, the same character of institution it was when the deposition was given by Major Fairbanks?

A. It has.

8. Is Major Fairbanks who gave that deposition living or dead?

A. Not living. He died last fall.

9. Did Major Fairbanks die before or after the original
174 bill in this case was filed

A. Before.

10. You say you have lived at Sewanee for thirty years, I wish you would go on and tell in your own way the character of business transacted at Sewanee, the occupation of its citizenship, and give a general description of the village of Sewanee?

A. Sewanee is strictly a university town. The inhabitants are all tenants of the University, living on grounds leased from the University. The population may be estimated at about 1,200. Prior to the establishment of the University, there were only one or two temporary buildings here at Sewanee. The growth of the village has been synchronous with the growth of the University. There are ten merchants in the village and the University Supply Store, owned and operated by the University. While the University corporation does most of its trading with the University Supply Store, still, it does not confine its trading to the University Supply Store, but deals with all the merchants in the village, its monthly bills representing large and varying sums. While this is true of the corporation, there are a number of University professors, students, employees, skil-ed and unskilled, who do almost their entire trading with the merchants in the village. A careful investigation has disclosed the fact that not only is it true that practically all the business of the merchants in the village is due, either directly or indirectly, to the University, but it would not be far from wrong to say that it is entirely due to the University. Every merchant in the village, with one or two exceptions, stated that 75% to 90% of their business was due, directly or indirectly, to the University.

There are two dealers in coal whose business is due directly or indirectly to the University.

There is one firm of painters and wall-paper dealers whose business is due, directly or indirectly, to the University; and so with the two firms of livery-stable men.

There is a steam laundry, not owned by the University, whose business is due entirely to the University.

There is a University press, not owned by the University, whose business is likewise due to the University.

There are five contractors and builders whose business is due entirely to the University, directly or indirectly.

It is perhaps unnecessary to mention such public corporations as a Cumberland Telephone and Telegraph Company, the
175 Western Union Telegraph Company. Southern Express Company, and the Nashville, Chattanooga & St. Louis Railway.

There is at Sewanee a large saw-mill, established here about six years ago by Mr. Harry Parker of Tullahoma, Tennessee. Mr. Parker established this plant after entering into an understanding with the University for the purchase of its timber, so this enterprise is due entirely to the University.

11. I will ask whether or not you have boarding houses or hotels here, and, if so, their connection with the University?

A. There is one hotel, the Sewanee Inn, owned and operated by the University. There are a number of boarding houses and halls, some owned and operated by the University itself, others by tenants of the University for the accommodation of the students in the several departments of the University and of the residents generally and summer visitors.

12. I will ask you whether or not practically all the citizens of Sewanee are here on account of the University of the South, either directly or indirectly?

A. Unquestionably so.

13. Please explain in a general way the various things that have attracted visitors here?

A. In the first place the professors and students are here because of the University, but almost in the same sense all employees, skilled mechanics, such as stone-cutters and other laborers are here because of the University. A large number of residents are attracted to Sewanee by the opportunities afforded for the education of their children. Merchants and dealers by opportunities afforded from a business point of view. In fact, it would be difficult to find a single individual here at Sewanee who is not here because of the University.

14. I wish you would explain whether or not the people of Sewanee pay any taxes or contribute in any way to the maintenance of the County and State governments, public schools, etc.?

A. I file herewith as exhibit "A" an official statement of the assessed valuation of Franklin County for 1906, signed by George Mosely, clerk of County Court of Franklin County, which shows that the value of the real estate on which the eighteenth district assessed the taxes is $52,770. Sewanee is practically the eighteenth district. Notwithstanding the fact that the land is all mountain land and poor, there are only eleven districts in the county whose assessed valuation is greater than that of the eighteenth district, and

there is only one district in the county whose assessed valua-
176 tion on all other property is greater than that of the eighteenth district. That district is Winchester and it is estimated that if the bank stock was omitted the assessed valuation of all other property, except real estate, in the eighteenth district, would be even greater than that of Winchester. It can readily be seen then that Sewanee contributes very largely to the support of all public institutions, such as the public schools, public roads, etc. It must however, be borne in mind that the bank stock which is assessed to Winchester is owned, in a large measure, by other districts.

It is not true therefore, as alleged in the answer in this case, that Sewanee contributes nothing to the support of the public schools and to the maintenance of the public roads. On the other hand, in addition to what it contributes through tax, the University of the South has given a lease at the nominal rate of one*d* dollar per annum, which is never collected, of a large tract of land as a site for the public school building and for purposes of a campus.

During the years 1900 to 1906, the concessions granted by the University of the South on account of board and tuition to students of the State of Tennessee, represent the sum of $18,458.50 and similar concessions to students from Franklin County alone aggregate the sum of $11,826. So apart from the general benefit to be derived from the location of *the* such a University in the State and County, the material benefits to individual st*du*ents are very considerable.

(Doctor Wiggins here offers a statement to counsel for defendant for inspection and offers to file it, if desired, which was waived by counsel for defendant.)

Under statute of 1903, the University was authorized to enclose a portion of its domain and to place gates across public roads. The same statute required the University to maintain all public roads within this enclosure at its own expense. During the year 1903, the maintenance of these roads within the enclosure cost the University $912.70. In 1904, $380.52, in 1905, $310.34, in 1906, $560.72, The total am*p*unt expended on roads, on its own domain, during the years 1900, 1906, is $3,118.51.

Now as Road Commissioner of the eigh*th*teenth district, I wish to testify that every individual of legal age living in this district has been summoned and required to work the public roads or to pay the tax of $3.75 each. During the year 1906 I paid over to D. S. Osborne, Trustee, $370.00 collected on account of road tax. It will be readily seen that the major portion of this amount was paid by citizens of the University community who are either directly or indi-
177 rectly connected with the University and it must be borne in mind that the entire amount was expended on roads outside the University enclosure. So, while the University Corporation maintains at its own expense all the roads within the enclosure, the citizens of this community, which includes University professors, students, employees of all kinds, contribute to the support of the public roads outside of the enclosure.

15. State briefiy the various departments now maintained by the University of the South?

A. The following departments are in operation: Academic (Department of Arts and Sciences), Medical, Pharmaceutical, Law, Theological, and the Sewanee Grammer School, which prepares boys for admission to a University.

16. I will ask you whether or not you are maintaining the same kind of university contemplated by the founders when the charter was granted?

A. Yes.

17. I will ask whether or not this institution has continued from the time of its foundation to the presrnt tkme to be the same kind of institution as was contemplated and as now exists?

A. The university was chartered in January, 1859. Within the next two years the sum of $500,000. had been subscribed for an endowment and the corner stone of what was intended to be the central edifice of a group of university buildings was laid with imposing ceremony in the presence of 5,000 people it is estimated from all parts of the country. The civil war followed almost immediately; the corner stone was shattered by the fed-ral forces, the -*dn*owment subscribed was lost, and, after the war, nothing remained but the university domain and its charter.

In 1868 the University was formally opened with two professors and five students, in order to prevent a large part of the domain from reverting to the original donors. From these post*p*bellum humble beginnings the university has continued to grow until today there are more than forty professors and instructors, more than five hundred students, ten permanent stone buildings of good architecture and of considerable value.

18. Will you file as exhibit "B" the University of the South catalogue of 1906-7?

A. I will.

19. I will ask you whether the University, or not, has had and continues to have a considerable struggle to raise sufficient funds with which to maintain the institution?

A. The University has an annual deficit of something more than $7,000. Its struggle with p-verty has been a constant one.

178 *$7,000.00. Its struggle with p-verty has been a constant one.*

20. I will ask you whether or not the rents received from leasing the property sought to be taxed by the State and County are used by the University in maintaining the *k*nstitution?

A. They are.

21. Please state what you know of the reservation of the 1000 acres?

A. Section 10 of the University charter authorizes the university to hold and possess land, "not to exceed 10,000 acres, 1,000 of which, including buildings and other effects, and property of said corporation, shall be exempt from taxation, so long as said lands belong to the University."

Immediately after the laying *off* of the corner stone, in October, 1860, the University, in November of that same year, through its civil engineer, C. R. Barney, proceeded to set apart the one thousand acres which were to be exempt from taxation under the charter, and were to be known as the University Reserve. Original maps and drawings made by Col. Barney were sent during the civil war to Montgomery, Alabama, for safe keeping. The train which was carrying them to their destination was destroyed at Opelika, Alabama, and all these original maps and drawings were lost. Major George R. Fairbanks, one of the original founders, and Commissioner of Buildings and Lands from the first establishment of the University, had been closely associated with Colonel Barney in making the survey of the University domain. He claimed that he could recall the metes and bounds of the one thousand acre reservation, and his deposition in the case of the University of the South *vs.* A. J. Skidmore, Trustee, 1887, Major Fairbanks gave a general description of the metes and bounds of the reservation, stating the leas-holds that were included therein. The State and County, as the record will show, acknowledged Major Fairbanks' statement of the case to be true.

In the year 1900, the Bureau of Forestry of the United States Department of Agriculture undertook the management of the forest on the domain of the University. The Bureau had here at Sewanee for several months a corps of engineers under the direction of Mr. John Foley. I was at the time Vice Chancellor, and, at my request, Mr. Foley, with information given him by Major Fairbanks, made the re-survey of what was always claimed as the University Reserve.

I now file as exhibit "C," a map in colors of the University domain prepared by the Bureau of Forestry. The section represented by the colors white (leaseholds and clearings) and light blue
179 (Park) constitutes the University Reserve; the one thousand acres exempted by the charter from taxation.

It is upon this reserve of one thousand acres and upon none other that the University has benefitted by the charter exemption.

22. Are the lines of this one thousand reserve shown on this map, well known to you, so that you know the property on the inside and outside of said reservation?

A. Yes, and the University has always paid taxes, not only on the land outside of this reservation, but on the improvements thereon.

23. Does this reservation, as shown by this map, cover all of the leaseholds of the University as set out and described in the bill, with the exception of those set out in the amended bill?

A. It does; with this exception that J. H. Fischer listed as an outside tenant, should be an inside tenant, and G. I. Dishroon, listed as an inside tenant should be on the out-side.

24. I notice in the copy of the lease filed in the case of the University of the South and A. J. Skidmore, a provision for the lessee to pay taxes and assessments. Please explain the meaning of this provision?

A. An explanation was given by Major George R. Fairbanks in

his deposition in the case of the University of the South *vs.* A. J. Skidmore, Trustee, 1887. That explanation is the correct one, To-wit; that the amended charter, 1860, authorized the University to establish police and municipal regulations. Acting under this provision, the University at one time did proceed to levy a tax upon the leaseholders for the maintenance of roads, etc. The phrase in the lease, "Taxes and Assessments," had reference to such municipal taxes, and not to taxes levied under the authority of State and County. The question may naturally be asked why in reprinting the lease forms the phrase was allowed to remain, to which I would answer that leasehold improvements outside of the One Thousand Acre Reservation have always been considered subject to taxation, and, as a matter of fact, taxes have always been paid upon such leasehold improvements. The phrase "taxes and assessments" would properly apply to such case and as the One Thousand Acre Reservation is only about one-eighth of the University domain, and the number of leasehold improvements on this "outside" domain will continue to increase, it is well that the form of the lease should remain unchanged.

25. State whether or not the fact that this property is exempt from taxation is taken into consideration in fixing the amount of rent when the leases to your tenants are executed?

180 A. Yes, and from the very foundation of the University the exemption from taxation has always been regarded as a valuable asset. In the annual catalogue and Announcements, and other publications, for many many years, the University has used the following expression which I now quote from the "Catalogue and Announcements" for 1906-1907, page 32, which same expression is to be found in the catalogue for previous years: "Building lots are leased at reasonable prices for a long term of years to suitable persons. Inasmuch as the entire one thousand acres of reserve, with all improvements, is exempt from taxation, lessees secure valuable privileges for a nominal sum."

(It is admitted that the foregoing quotation appears in the catalogue of 1906-7 and may be so copied in making transcript for appeal in lieu of entire catalogue. Lynch for Compl'nt, Cates for Deft.)

(Witness offers to adversary counsel that he will file all the catalogues for previous years, containing this same claus, if they desire, which was waived by counsel.)

It will thus be seen that the University has always in fixing the rent taken into consideration that the improvements attached to the freehold and were the property of the University, and that the tenant was to enjoy only a limited use of such improvements.

The University stipulates in the several leases a sum representing the minimum value of such improvements, in some cases more, in some cases less, according to the location of the lot.

26. If it should be held that the tenants are taxable under the proceedings which we have enjoined in this case, I will ask what would the effect on the rates of the University be?

A. It would materially depreciate the rental value and would act as a deter-ent to prospective lease-holders.

27. Please state whether or not the first term of a great many of your le-sees has expired and have not yet been renewed, if so, explain how this is?

A. Yes, the first term of quite a number of lessees has expired. The lease provides that the University may renew the lease for two additional terms of a like period, but in only one case that I can recall has the leaseholder applied to the University for a renewal, so at present such leaseholders are in the class of tenants-at-will lessees.

28. Will you prepare and file as exhibit "D" of your deposition, a statement showing the name of each of your tenants on the reservation, the date of his lease, the renewals, and the period for which it can run &c.

181 —. I will and file such statement as exhibit "D."

29. In order that the court may understand the statement, I will ask you what is meant by the word "Renewals," that is to say, do you refer to the right of the renewal or to the fact of renewal having been made?

A. To the right of renewal, Article XXVII, section 8 of the ordinances of the University reads: "No lease shall exceed the term of thirty-three years, or be accompanied with the privilege of more than tw/ renewals." This shows clearly, as has been previously stated in this deposition, that the University clearly fixed the period for the use and enjoyment of the improvements by the lessee.

30. Have any of these leases on this list been renewed?

A. One, W. L. Myers, whose lease was for a period of ten years with a privilege of two renewals. In his case the renewal has been grabted for the second term of ten years.

31. I notice there are nine non-residents on the list, I will ask you if the property held by these non-residents was made for an investment, or what is the nature of their holding?

A. Of the nine non-residents, four reside at Sewanee for several months of the year; in other words, Sewanee is their summer home. Four were originally permanent residents, but for one reason or another moved away and now rent their homes. One of these latter was at one time a professor of the University, one acquired occupancy by failure of the original lessee to repay a certain amount borrowed from him in the placing of the improvements on the leased ground, the transfer being made with the consent and approval of the University. So far as my knowledge extends, no one has ever placed improvements upon leased ground here at Sewanee solely as a matter of investment.

32. I will ask you whether or not Sewanee is situated on the top of the Cumberland Mountain, and whether or not soil here is poor, unproductive and unfit for agricultural purposes?

A. Sewanee is on a plateau of the Cumberland Mountains, at an elevation of two thousand feet above the sea-level. Quoting from a publication entitled "Conservative Lumbering at Sewanee, Tennessee," issued by the Bureau of Forestry, "the soil of the

plateau is a loamy sand. It is not at all valuable for agricultural purposes."

33. I will ask you whether or not most of the land in Franklin County is good farming land and most of the people engaged in agricultural pursuits?

A. Yes.

182 34. Do you know what the object of the founders of the institution in securing an isolated place for the site of the University was?

A. Section 10 of the charter reads that "said University shall hold and possess as much land as may be necessary for the buildings, and to such an extent as may be sufficient to protect said institution and the students thereof from the intrusion of evil-minded persons, who may settle near said institution."

One object, therefore, was to locate the University where it could acquire a sufficient body of land at a reasonable figure for the purpose set forth in the charter. Also a place free from malaria, with an abundant supply of good drinking water, accessible to all parts of the South. A place where the University could create its own environment, its own atmosphere, and create its own ideals, and cherish them free from the distractions and disturbing influences of city life.

Other states and localities were offering great inducements. One of the principal inducements offered by the State of Tennessee was the exemption of one thousand acres of its domain, with improvements thereon, from taxation.

35. About how much of this One Thousand Acre Reservation is actually covered by University buildings? I mean buildings used for educational purposes exclusively?

A. Roughly estimating I should say twenty-five acres.

36. I will ask you if any of the great universities of America cover anything like one thousand acres for their educational buildings?

A. Certainly not, nor in the world.

B. L. WIGGINS.

STATE OF TENNESSEE, *Franklin County, ss:*

Personally appeared before me, Iliff Congee, Notary Public in and for said county and state, B. L. Wiggins, Vice-Chancellor of the University of the South and to me well known, and being duly sworn subscribed the foregoing instrument and testified to the truth of the statements therein. Done at my office in Sewanee, Tennessee, this May 2nd, 1907.

ILIFF CONGEE,
Notary Public.

[NOTARIAL SEAL.]

Cross-examination:

1. *Q*s the chief executive officer of the University and Vice-Chancellor, you are more familiar than any one else with the property of the University, its policy and its history, are you not?

A. I think I am.

183 2. Where did the description of the One Thousand Acre Reservation in the bill in this case come from?

A. It came from page 93 of the Record book of our Commissioner of Buildings and Lands.

3. At what time was the survey made which is embodied in this description?

A. November, 1860.

4. And the records of the Commissioner of Buildings and Lands show this one thousand acre reservation described by metes and bounds, just as it is in the bill in this cause?

A. Yes.

5. When did the University formally adopt the land described in this reservation as the thousand acres to be exempt under its charter?

A. From the very beginning of active operations on the university domain. The university has never benefitted by the exemption from taxation of any other than the particular tract of one thousand acres upon which it has continuously and does now, claim exemption.

6. Was it not in 1872 that the University authorities for the first time formally adopted this particular one thousand acres as the one thousand acres to be exempt under the charter?

A. No.

7. Is this information from hearsay or from records of the university?

A. From the proceedings of the first board of trustees and other official publications of the University of the South.

8. Will you prepare and file as exhibit "1" to this cross-examination a copy of all descriptions of this one thousand acre reservation and all resolutions of the authorities governing the University of the South, regarding the location of this one thousand acre reservation, from the time of the charter up to and including the year 1873?

A. Full and complete answer to this question would fill many pages. A reference to the record in the case of the University of the South *vs.* A. J. Skidmore, Trustee, 1887, pages 21, and 22, will show that the State and County admitted twenty years ago what the attorneys for the State and County now seek to establish by proof. I quote the following:

"Respondent (State and County) admits that One Thousand Acres were set apart by survey or otherwise, as the part of the land complainant corporation (The University of the South) was entitled to hold as exempt after the grant of its charter.

"Respondent admits that all the property assessed by the Trustee of Franklin County for State and County Taxes are lots of ground and buildings thereon located on the One Thousand Acres of land set apart by the complainant, exempt under its charter, soon after the grant thereof."

184 In my answer to question 21 of the direct examination in this case The University of the South and others against James R. Jetton and others, I made reference to the original survey of the one thousand acres by C. R. Barney, civil engineer, the prep-

aration of the map and drawings showing the University Reserve of this One Thousand acres, and the circumstances attending the loss of the same.

Also that Major George R. Fairbanks, who had been Commissioner of Buildings and Lands for the University from the very beginning of active operations and had been very closely associated with C. R. Barney in the making of the original survey gave me as vice chancellor a description of the metes and bounds of the one thousand acre reservation and that acting under my instructions the Bureau of Forestry of the United States Department of Agriculture, Washington, D. C., prepared a map in colors of the University domain, on which the reserve was clearly defined, as already indicated. I will refer you again to exhibit "C" and to the original bill in this cause, for the description of the metes and bounds of the Barney survey of the University reserve in 1860. References to this reserve are to be found frequently in the printed documents of the University of the South.

I will cite you to the following proceedings of the Board of Trustees:

Beersheba, July 6, 1868, (figure "5" is pencilled over the "6" in the foregoing date: Clerk), page 92: "The Right Reverend Bishop Polk moved to appoint a Committee of Survey and Selection, to consist of three (3) persons, to indicate such lands as may suit best for University purposes."

Beersheba, August 11, 1859, page 129: "That the Commit-ee have authorized C. R. Barney, Engineer and Surveyor of the Board, etc."

August 12, 1859, page 136: "On motion of Mr. Fairbanks, it was further ordered that C. R. Barney be appointed Engineer and Surveyor for the ensuing year."

New Orleans, February 13, 1860, page 172: "That the Executive Committee be authorized to take such steps as they may deem necessary to place such lands on the University domain, as are not required for university purposes, under lease, so soon as the necessary partitions and surveys now being made are completed.

Sewanee, October 12, 1860, page 206: "That the Executive Commit-ee be authorized to arrange the reservations required for the use of the University and around the springs, and also to lay out public grounds, avenues, streets, etc., and shall give two (2) months' notice
before the first of June next, or as soon thereafter as may be
185 practicable for leasing the domain. The size and shape of the lots, and the terms, conditions and mode of leasing thereof, shall be determined by the Executive Committee, who shall have full discretionary powers in reference to all matters connected therewith * * *.

The Civil War interrupted proceedings until 1867. In that year a meet/ing of the Board of Trustees was held at Montgomery, February 13, and in the proceedings of that year, page 21, will be found the following resolution:

"That the Reverend Doctor Curtis be requested to make known through the press the loss of the surveys and maps belonging to the

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University, and also an album of landscape drawings by Bishop Hopkins of Vermont, and that an effort be made to recover the same."

There was a meeting of the Executive Commit-ee held at Nashville, Tennessee, January 25, 1862. The minutes of this meeting are in manuscript and I cite the following resolution:

"Resolved, That the Reserve marked on the map as the principal Reserve consisting of One Thousand and Thirty Acres, be reserved for University purposes."

This resolution shows that a map had been made and the Reserve of One Thousand Acres set apart, and its metes and bounds clearly established.

There was another meeting of the Executive Committee at Sewanee, October 12, 1866, and I quote the following resolution:

"That lots within the r-serve be leased for a period of ten years, for the annual rent of twenty-five dollars per year to persons who shall stipulate to build within twelve months, improvements, such as dwelling-houses and necessary outbuildings, of not less than eight hundred dollars value, etc."

"Resolved That the Trustees of the University may build within the Reserve * * * at a rent of five dollars per annum."

Proceedings of the Board of Trustees, August 11, 1869, page 20:

"It is to be taken into consideration also that they (Lessees) will enjoy almost, if not entire exemption from taxation, etc."

"The usual rate of taxation on the property, if held by deed, would in most cases, exceed the amount paid as ground rent, etc."

Page 24: "Your committee recommend that the unappropriated portion of One Thousand Acres of land lying around the University building, which is by law exempt from taxation, amounting to about six hundred acres, be surveyed under the direction of the Commissioner or Buildi-gs and Lands, and laid off into lots of an average extent of about two acres, etc."

Sewanee, July 13, 1870, page 24: "That in all leases of ground within the reserve the size of lots, the character of improvements thereon, etc."

"That in all leases of the domain, outside of the reserve etc."

Sewanee, July 15, 1870, page 44: "It appears that 22 of the leases are within the reserve containing one hundred and twelve acres, etc."

Sewanee, July 13, 1871, page 76: "I have been enabled from data in my possession to construct a large map of the domain upon a scale of four hundred feet to the inch, on which all the locations of all the leases made up to this time are shown, etc."

This latter was from the report of George R. Fairbanks,
186 Commissioner of Lands and Buildings.

If further references are desired I will place on file a "History of the University of the South," by George R. Fairbanks, Historiographer, calling your attention to the following pages:

33-35-39-67-79-106-124-136-149-252-254-256-270.

9. Is there any record of the University showing that the survey of the One Thousand Acres Reservation made in 1860 was authorized by the University authorities, or made under their direction?

A. The numerous references and quotations given in the answer to the last question will be sufficient answer for this.

10. In your examination-in-chief, you testify as to the taxes paid by inhabitants of Sewanee. You do not mean by your deposition that any tax at all is paid by any one on real estate within this One Thousand Acre Reservation, do you?

A. I do not.

11. What is the average value per acre of the real estate owned by the University outside the One Thousand Acre Reservation?

A. I have never considered that question, as according to the statures of the University, the title of the land can never be alienated.

12. Do you know its assessed value?

A. One hundred acres in the Ni-th District at nine hundred ($900.) dollars. Seven thousand three hundred acres in the Eighteenth District at nine thousand ($9,000.) dollars.

13. In your deposition-in-chief you refer to gates put across roads leading into the Reservation and the amount the University had expended on the roads within the Reservation, under the Act of 1903 referred to. Is it not a fact that this Act was passed at the request of the University?

A. It is a public Act and as such will show for itself. The University was interested in the passing of this act.

14. In your direct examination, as I understood it, you say the provision that the lessees shall pay "taxes and assessments" is retained in the leases to provide for the payment of these "taxes and assessments" without the One Thousand Acre Reservation?

A. Your question would imply an incorrect interpretation of answer to question 24 of my direct examination, from which I now quote:

"As the One Thousand Acre Reservation is only about one-eighth of the University domain, and the number of leasehold improvements on this 'outside' domain will continue to increase, it is well that the form of the lease should remain unchanged."

For the phrase "taxes and assessments" would properly ap-
187 ply to such *such* cases.

15. And the reason it is well to retain this phrase in the lease is that the University may, if it desire, compel these "outside" lessees to pay the taxes, is it not?

A. That is a question of policy which the Board of Trustees has never definitely acted upon. I can only say that thus far the University has assumed the payment of such taxes. The tenants who live "outside" the One Thousand Acre Reservation are, as a rule, of the poorer class and the University has never raised the question with them.

16. The amount of rent payable annually by those who were lessees of the University at the time this bill was filed is fixed in their leases, is it not? And could not be affected by any decision in this case, could it?

A. The lease form will speak for itself and that question will be one of judicial construction.

17. In exhibit "D" to your deposition, which is a list of the tenants of the University, are the tenants named therein the original lessees, or the present holders of the leasehold?

A. The present holders, who are, in many cases, the original lessees.

18. Is it not a common practice of these lessees from the University to insure the buildings in their own names, and is not an Officer of the University an Insurance Agent, who has procured such policies for the lessees?

A. It is a fact that improvements are insured in the name of the lessee.

To show what the common practice is I will cite the cases in which the improvements were destroyed by fire and there was an insurable interest.

The residence of Bishop C. T. Quintard was destroyed by fire about the year 1888. The property was insured for four thousand dollars. Improvements were replaced to the value of about eight thousand dollars.

The residence of General E. Kirby-Smith was destroyed by fire several years —; was insured for the sum of three thousand five hundred dollars, I think, and improvements replaced over six thousand dollars.

The residence of Mr. Richard Biddle was destroyed by fire three or four years ago; was insured for about five hundred dollars, Mr. Biddle, because of the provision of the lease which reads: "That improvements to the value of $—— shall be made and kept upon said premises of party of the second part," not desiring to rebuild
188 upon the same lot, Mr. Biddle offered to surrender the lease and improvements not destroyed by fire of the value of one hundred and fifty dollars or two hundred dollars and to lease another lot on the domain, placing thereon improvements of equal value with the original.

And so I might cite other cases to show that even in case of fire and the total destruction of improvements on leased lots, the lessee has recognized the right of the University to require that improvements to the value of $— be made and kept upon the premises.

An officer of the University, Mr. R. M. Du Bose, Treasurer, is a fire-insurance agent, acting, however, not in an official capacity.

As a lessee, I have placed my insurance with a Nashville agency.

Personally, therefore, and, I may add, officially, I am not familiar with the conduct of Mr. Du Bose's private business.

19. Have not there been several cases where lessees have mortgaged their interest with the knowledge and without objection from the University?

A. There are not, although parties have secured the consent of the University to transfer their leases in accordance with the provisions of the lease contract, the University having knowledge of the fact that such transfers were being made to secure the payment of a loan or a debt.

20. Has the University ever yet taken possession of the improvements on any leased lot, and, if so, under what circumstances?

A. Yes, and in one case that I have in mind [illegible] payment of the annual rent.

21. Did the University take possession of the improvements without paying anything at all to the lessee?

A. Yes, for the value of the improvements was by mutual agreement regarded as a fair equivalent of the rent due.

22. Under the lease executed the University has the option to pay the lessee or to renew the lease. Has the University ever exercised its option and purchased the interest of the lessee at the end of the first term of the lease?

A. Without reference to the records I can recall now no instance.

23. Has the University ever purchased the improvements from the lessee during any term of the lease?

A. Yes.

24. In the lease contract what is meant by the provision "provided, however, that in fixing rental for the new term the value of the improvements shall not be taken into account as against said party of the second part, etc.?"

189 A. In order to answer this question fully and clearly, I will give a brief statement of the conditions of the lease, and I beg to quote as the best expression thereof the answer to the bill, in the case of the University of the South *vs.* A. J. Skidmore, by the attorneys for the state and county in that case, as follows:

"And the University people accordingly proceeded to lay off said One Thousand Acres, or so much thereof as was sufficient, into town-lots suitable for residence and business houses, divided up by streets, alleys, etc., and leased them to various persons desiring to locate in said town, and for the purpose of building their store houses, shops, offices, market houses, and other buildings usually needed and built in villages, towns and cities, a great many, perhaps, the large majority of which said leases were made for long terms of years, usually, as your orator is informed, for a term of thirty-three years; with the privilege of holding for ninety-nine years, at the option of the lessee, and your orator shows the court that when a tenant gets a lease for a term of thirty-three years, they erect their own houses thereon; and, in addition to the rents received by the University for the lease of the premises, at the expiration of the terms of the years for which the premises are leased, the whole property, house and all, reverts to the University, so that — the end of a comparatively short period of time the University will be the absolute and unconditional owner of the next to the largest town in Complainant's County."

From this quotation you will see that in leasing a lot, the lessee agrees as a consideration therefor, to put improvements to the value of $—— (which may be considered the advance payment), and to pay an annual rental of $——.

Now suppose that a lessee is required by the contract to put improvements on the leased lot to the value of two thousand dollars and to pay an annual rental of $25.00.

Or suppose further that the lessee should place on the leased lot improvements to the value of five thousand dollars, instead of two thousand dollars, it would be evidently unfair at the expiration of the

first period in fixing the annual rental for the second period, to take into consideration the value of the improvements, which represent not only a part of the original consideration, but an amount in excess thereof.

In order to make this point clearer, I wil- put the case another way:

Agrees to lease a certain lot from the University, to pay two thousand dollars cash in advance, and an annual rental of twenty-five dollars. The lease is for a period of thirty-three years, with the privilege of two renewals; the annual rental, however, of twenty-five dollars being fixed for the first period only, the question of increasing or decreasing this annual rental to be determined at the expiration of the first period, or the second period, as provided for by the lease. The University and the lessee agree that the cash payment of the two thousand dollars is not to affect the question of the annual rental for the second or third period, either in favor of, or as against the lessee.

25. Will you file as exhibit "2" to your deposition a blank form of lease as now used by the University?

A. Yes.

190 26. In the "Catalogue and Announcements," filed as "Exhibit B." to your deposition, the statement is made that "building lots are leased at reasonable prices for a long term of years to suitable persons, etc.," quoted by you in your deposition in chief. Was not the phrase "at reasonable prices" a stipulated sum until recently?

(The clerk does not here attempt to untangle the quotation marks, etc. H. M. D. Clk.)

A. It was. In many of the other catalogues will appear a similar expression, as follows:

"Building lots are leased for a long term of years to desirable parties, at prices ranging from fifty dollars to twenty-five dollars per annum. Inasmuch as the entire One Thousand Acres, with all improvements are exempt from taxation, lessees secure valuable privileges for a nominal sum."

You will observe, therefore, that the only difference of expression is that for "from fifty dollars to twenty-five dollars per annum" in former catalogues was substituted "at reasonable prices," in the catalogue for 1906-1907.

27. Are not the lessees "outside," and "inside" the Reservation charged the same prices per year?

A. No sir.

28. Approximately, what is the value of all the property of the University of the South, of every nature?

A. About seven hundred thousand dollars. This includes Endowment Fund, Personal Property of every description, and Real Estate, both in Tennessee and in other states.

B. L. WIGGIN.

STATE OF TENNESSEE, *Franklin County, ss:*

Personally appeared before me, Iliff Conger, notary public in and for said county and state, B. L. Wiggin, vice-chancellor of the University of the South, to me well known, and being duly sworn, subscribed the foregoing instrument and testified to the truth of the statements therein. Done at my office in Sewanee, Tennessee, this May 2nd, 1907.

ILIFF CONGRER,
Notary Public.

[NOTARIAL SEAL.]

Deposition endorsed: Filed May 10, 1907, H. M. Doak, Clerk.

191 The following exhibit "A" to the foregoing deposition of B. L. Wiggin, was filed, viz:

EXHIBIT "A" TO B. L. WIGGINS.

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON ET AL.

Aggregate Assessed Valuation of Franklin County for 1906.

Dist.	No. acres.	Value.	No. of town lots.	Value.	Value all other property.	Total valuation.	State tax.
1	10906	179120	182	29560	10620	219300	2193.00
2	17512	117710	.....	.....	10100	127810	1278.10
3	18145	173470	11	2710	23030	199210	1992.10
4	32339	175930	37	14520	25430	215640	2156.40
5	25559	165640	4	580	14410	180630	1806.30
6	4886	38700	.....	.....	5990	44690	446.90
7	12455	55470	.....	.....	3450	58920	589.20
8	13156	48720	.....	.....	180	48900	489.00
9	20409	129900	2	650	5490	133040	1330.40
10	26087	190260	126	65650	13890	270500	2705.00
11	10961	53880	.....	.....	7330	61210	612.10
12	21986	61560	37	11660	7800	81020	810.20
13	22188	40310	.....	.....	150	40460	404.60
14	7527	43440	.....	.....	.....	43440	434.40
15	11050	49320	.....	.....	200	49520	495.20
16	34165	65870	.....	.....	3350	69220	692.20
17	15683	119280	86	29080	19630	168030	1680.30
18	21420	52770	.....	.....	56890	109660	1096.60
19	4933	45650	.....	.....	590	46240	462.40
20	8939	117830	1	40	1140	119010	1190.10
21	17269	57340	11	2490	370	60200	602.00
Decherd	57	5140	278	108790	32370	146300	1463.00
W. T. D	39	10800	355	3465200	128150	485470	4854.70
24							$29780.90
25							4240.00 Pol.
	357671	1995500	1130	.....	$612250	$370340	$34020.90

The rate of taxation is $1.20 on the hundred dollars.

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STATE OF TENNESSEE, *Franklin County:*

I, George Mosely, Clerk of the County Court of said County, do certify that the foregoing is a true and perfect Aggregate of the assessed taxable property of said county for the year 1906, as appears from the returns of the assessors and passed upon by the Board of Equalization for said county, now on file in my office.

Witness my hand at office in Winchester, Tenn., the 9th day of March, 1907.

GEORGE MOSELY, *Clerk.*

Endorsed: Tax Aggregate Franklin County 190–. Pay Warrant No. — for $— Clerk's Fees — 190. Clerk will please fill out above blank.

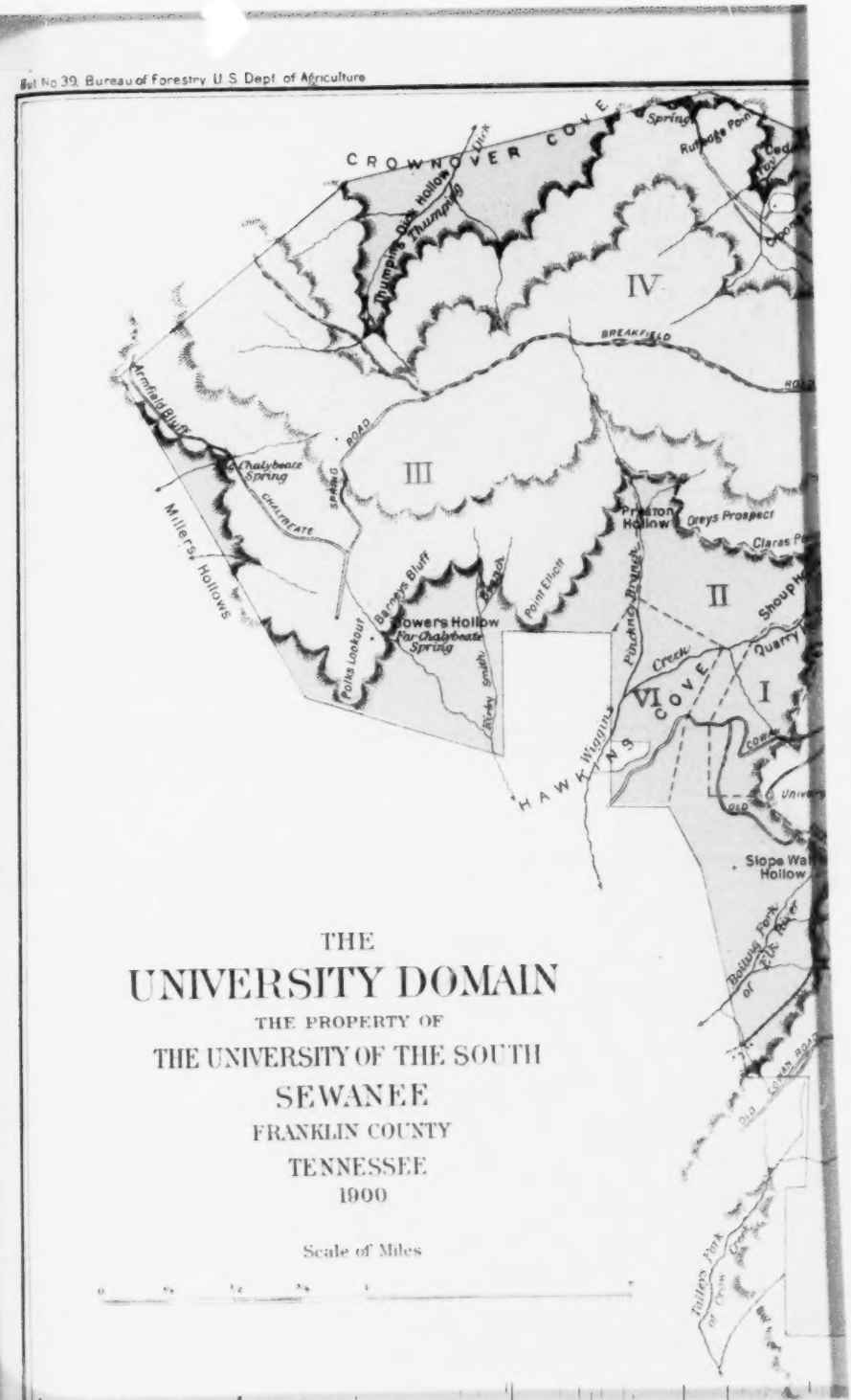
Further endorsed: Filed May 19th 1907, H. M. DOAK, Clerk.

Exhibit "B" to B. L. Wiggins' deposition is a catalogue of the University of the South for 1906-1907, which is not copied, because of a stipulation, 2nd paragraph of the answer to examination-in-chief, to question 25—H. M. D., Clerk.

Exhibit "C" is a colored map, which it is impracticable to copy or to have copied. Therefore the original is hereto attached, viz:

(Here follows map marked page 192.)

Bul No 39, Bureau of Forestry U.S. Dept. of Agriculture



THE UNIVERSITY DOMAIN

THE PROPERTY OF

THE UNIVERSITY OF THE SOUTH

SEWANEE

FRANKLIN COUNTY

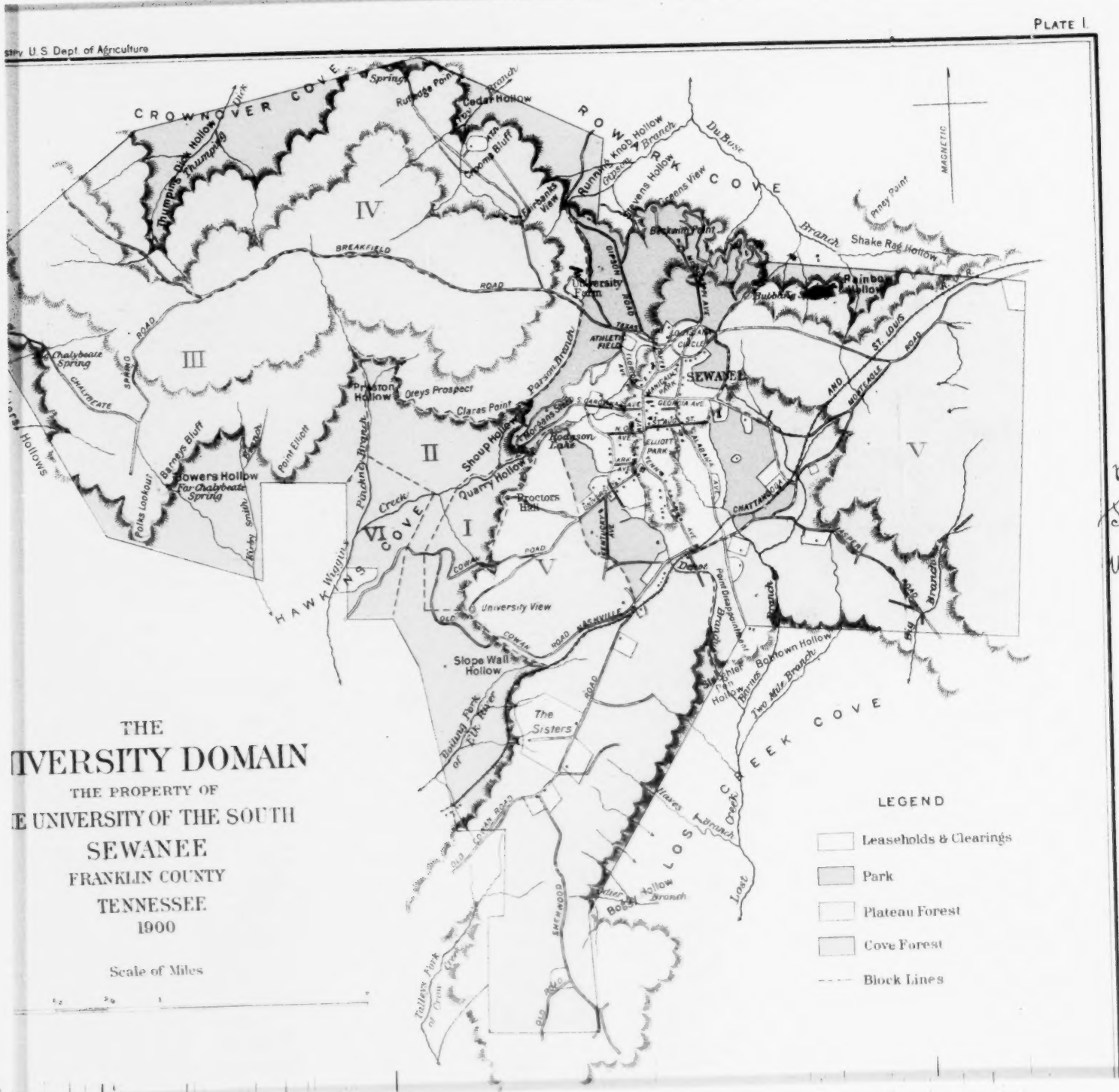
TENNESSEE

1900

Scale of Miles

0 ¼ ½ ¾ 1

PLATE I.



THE UNIVERSITY DOMAIN

THE PROPERTY OF
THE UNIVERSITY OF THE SOUTH
SEWANEE
FRANKLIN COUNTY
TENNESSEE
1900

Scale of Miles

LEGEND

- Leaseholds & Clearings
- Park
- Plateau Forest
- Cove Forest
- Block Lines

192

(No. 488.)
Sellow } p. 191
U. University

193 Exhibit "D" to B. L. Wiggins' deposition is a list of tenants of leasehold property and is not copied here because of the following stipulation; to-wit:

It is agreed that this exhibit is identical with exhibit "A" to R. M. Du Bose's deposition, except the last-named contains a column of "value of improvements" and that, in making up the transcript on appeal, this exhibit (Meaning "D" to Wiggins) be omitted and the one to R. M. Du Bose's deposition be used in lieu.

LYNCH,
For Complainants.
CATES,
For Defendants.

Exhibit "1" to cross-examination of B. L. Wiggins was not filed and, its filing apparently waived by Mr. Cates for defendants. H. M. D. Clerk.

The following is exhibit "2" to the cross-examination of B. L. Wiggins, viz:

Memorandum of Agreement made this — day of ——, A. D. —— between the University of the South, party of the first part, and —— party of the second part, Witnesseth that the said party of the first part doth hereby lease to the said party of the second part all that certain lot and premises situated at Sewanee, Franklin County, Tennessee, being part of the domain of said University of the South and described as follows:

for a period of — years from this date at an annual rent of — dollars per year, payable each year in advance, and this lease being expressly made subject to the provisions of the Charter, Constitution and Statutes of said University of the South, as well also to the regulations for leasing the domain of said University of the South established by the Board of Trustees. And the said party of the second part agrees with the said party of the first part that — will pay the rent above specified in manner aforesaid, and all taxes and assessments upon said premises; and — doth further covenant and agree that during the said term hereby granted -- will not, nor shall — heirs, or assigns, sell, or permit to be sold upon said premises hereby leased, any ale, beer, wine, or any liquors whatever; nor allow gambling of any description upon said premises, nor allow to be kept therein any Billiard Table, Shooting Gallery or Bowling Alley unless permission to keep the same shall have been given by the Commissioner of Buildings and Lands; nor suffer any business to be carried on injurious to the interests of the University;
194 nor permit the erection thereon of any church, chapel or place of religious worship, without the consent in writing of the said University of the South.

And it is further agreed: That the said premises shall not be sublet, nor this lease assigned or transferred without the consent in writing of the Commissioner of Buildings and Lands. And it is further

covenanted and agreed that any violation of the above restrictions and provisions shall cause this lease to end and determine, with a right to said party of the first part to re-enter upon said premises. And it is further agreed that in all cases of transfer, the University of the South shall have the refusal. And at the expiration of the present term the University of the South shall have the option of taking the premises by paying for all improvements made thereon, or may renew the lease for another term of — years, on such terms as may be agreed upon by the parties respectively, and may also give a second renewal for — years; and in case the parties cannot agree upon the value of improvements or the rental to be paid for a new term, the same shall be determined by arbitration, one of the arbiters to be selected by the Commissioner of Buildings and Lands and the other by the lessee; and in case they cannot agree, they shall call in an umpire—provided however that in fixing the rental for the new term, the value of the improvements shall not be taken into account as against the said party of the second part — heirs or assigns. And it is further agreed that improvements to the value of — hundred dollars be made and kept on the premises by the party of the second part.

In Witness Whereof, The said parties have hereunto set their hands and seals the year and day first above written.

For the University of the South,

—— ——, [L. S.]
Commissioner of Buildings and Lands.
—— ——, [L. S.]

I hereby assign and transfer to —— —— the within lease and all the rights, privileges and improvements thereon for value received this — day of —— A. D. ——.

—— ——. [L. S.]

I hereby consent to the above transfer.

—— ——, [L. S.]
Commissioner of Buildings and Lands.

I hereby assign and transfer to —— —— the within lease and all the rights, privileges and improvements thereon for value received this — day of —— A. D. ——.

—— ——.

195 There are four more forms of transfer and permission of the Commissioner of Buildings and Lands upon the aforesaid form of lease, which are all in exactly the language copied above and hence are not further copied in this transcript.

H. M. D., *Clerk.*

The foregoing form of lease is endorsed: University of the South, Sewanee, Tenn., Lease No. —.

And further endorsed: The University of the South *et al. vs.* James R. Jetton *et al.*, Exhibit "2" to cross-examination of B. L. Wiggins, Filed May 10th, 1907, H. M. Doak, Clerk.

196 The following deposition of R. M. Du Bose was filed for defendants, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON ET AL.

The deposition of R. M. Du Bose, a witness for the defendants, taken by agreement of counsel, in the presence of J. J. Lynch, Arthur Crownover, and W. L. Myers, attorneys for the complainants, and Felix D. Lynch and I. G. Phillips, attorneys for the defendants. Caption, certificate and all formalities waived.

The said witness being sworn deposed as follows:

1. What is your age and where do you live?

A. I am over 60; Sewanee, Tennessee.

2. What position do you hold with the University of the South, and how long have you held that position?

A. I am Treasurer and Commissioner of Buildings and Lands and have held the position since 1890.

3. Under the rules and regulations of the University, what are the duties of the Commissioner of Buildings and Lands?

A. 1st. The Commissioner of Buildings and Lands has supervision of repairs to buildings and gr/unds, under the direction of the Vice-Chancellor; 2nd: He shall lease tenements and grounds of the University when directed by the Vice-Chancellor so to do; 3d: He shall prevent trespassing and intrusion, reporting the same to the Vice-Chancellor and acting under his direction; 4th: When required by the Vice-Chancellor, he is to report to the proper law officers breaches of the laws and misdemeanors that may occur within the precincts of the University; 5th: He is authorized to abate nuisances sanitary of the domain of the University and shall — grounds to be kept in order and neatness.

4. State whether or not under the rules and regulations of the University of the South the Commissioner of Buildings and Lands has a general superintendance of all buildings and lands of the University?

A. Yes, under the direction of the Vice-Chancellor.

5. State whether or not all leases are executed by the Commissioner of Buildings and Lands on the part of the University?

A. Practically not. The Vice-Chancellor really does that work.

6. Please explain the list of lessees, marked exhibit "D" to B. L. Wiggins' deposition, and state which of these leases were executed on the part of the University by the Vice-Chancellor?

197 A. I may say that all were executed by the Vice-Chancellor, because they are not legal without his signature.

(NOTE.—By stipulation to answer B. L. Wiggins, to Q. 25, Examination-in-chief, Exhibit "D" to B. L. Wiggins, is not copied;

but is Exhibit "A" to this deposition of R. M. Du Bose, to which reference is made. H. M. D., Clerk.)

7. State whether or not the Commissioner of Buildings and Lands signs all leases executed by the University?

A. Yes.

8. Are the leases signed by the Vice-Chancellor?

A. They are.

9. State whether or not the Commissioner of Buildings and Lands is the custodian of the records of the University pertaining to their lands and the records of these leases?

A. He is.

10. All of the leases executed by the University provide and stipulate the amount of the improvements, or the value of the improvements, that the lessees are required to erect and maintain on the property, do they not?

A. They do.

11. State whether or not all of the lessees have complied with that requirement by erecting and keeping the improvements on the property of the value stipulated in the lease?

A. They have, to the best of my knowledge and belief.

12. State whether or not you are very familiar with all of the improvements placed on this leas-hold property?

A. I am.

13. Will you file as exhibit "A" to your deposition a statement from the records of the University, showing the value of improvements that each lessee is required to place upon the property?

A. I will.

14. Please examine the list of lessees, marked exhibit "D" to Dr. Wiggins' deposition, and state whether or not a number of the lessees own leaseholds that they do not occupy themselves, but rent out to other parties; and, if so, give the names of such lessees and to whom they rent the property, if you know?

A. Mr. C. Ruef has a house which he rents to J. B. Powell; Otto Fischer to Mr. Good; S. L. Holland has a house that he rents
198 to Mrs. Arnold; B. W. Wells to S. Sharp; S. S. Cotton to A. C. Leigh; Mrs. Legare to Luke Hawkins; M. E. Huger to Walter Parker; Satter Whit to Mrs. Tucker; Mrs. Stanley to Mr. Hunt; Mrs. A. L. Hall to Mr. Sneed.

15. Does the list you have given include every house in Sewanee that is rented?

A. I believe it does.

16. State whether or not there are a number of other houses there that have been rented out, but are now temporarily vacant?

A. I remember but one, that of Mrs. Weeks.

17. I see from this list that three leases are held by G. R. Fairbanks. Who occupies the houses on these lots?

A. I passed over one house—the Cotton house—that should have been put on the list, rented to Miss Virginia Harrison. Then, there is a third, a very small, dilapidated house, down at the depot, that I don't think is occupied. The third occupied by the family.

18. Do you know what rentals these tenants pay the lessees for these houses rented?

A. I do not.

19. What is the building that Ruef rented to Powell worth, not including the lot?

A. I do not know. I have never thought of it. Have not entered it for a long time and do not know the condition of it.

20. What is the building rented by Fischer to Good worth?

A. I will say about three hundred dollars.

21. What is that lot worth? I mean if sold outright?

A. That I cannot answer, I have never th/ught of it. The lands be sold (*Sic:* Clerk) and the question never occurred to me.

22. If the lands could be sold and if the University was willing to sell, and a purchaser wanted to buy, what would the house and lot be worth?

A. I should say about probably $350.00.

23. What is the building that Holland rented to Mrs. Arnold worth?

A. I expect about $400.00, probably.

24. What is that lot worth, or what would it be worth, if the University had a right to sell it and a purchaser desired it?

A. I cannot answer that question—I have no idea.

25. Have you no means of arriving at the probable value of the lots in Sewanee, if sold outright?

A. I have no means of so doing.

26. What would be a fair and reasonable price for the
199 property rented by Holland to Mrs. Arnold, including the buildings and the lot, if the lot could be sold, the owner wanted to sell and prospective purchasers wanted to buy?

A. Just about the value of the house as given I presume.

27. Then, you do not consider the lot worth anything?

A. Well, comparatively little.

28. It brings in a handsome income, does it not, to the University?

A. It brings in $12.50 a year.

29. What is the value of the house rented by Wells to Sharp?

A. I should say $1500.00.

30. What is the value of that lot?

A. I do not know.

31. What is the annual leasage?

A. $25.00.

32. What is the value of the house rented by Cotton to Leigh?

A. $500.00.

33. What is that lot worth?

A. It is worth, I suppose, the whole thing is worth about $500.00. I do not believe anything will bring more than the value of the lot. It is not productive—no way of making a living on it.

34. What leasage does the University receive for that lot?

A. $25.00.

35. What is the value of the house rented by Mrs. Legare to Hawkins?

A. It is in a very dilapidated condition and should not, I think, bring more than $500.00, or say, $700.00.

36. What is the value of the house rented by Mrs. Huger to Parker?

A. About the same price, about $800.00, I suppose.

37. What leasage does the University receive for that?

A. $25.00.

38. What is the value of the house rented by Satterwhite to Mrs Tucker?

A. That is old and dilapidated and worth, possibly, I suppose, $1,000 on account of location.

39. What lessage does the University receive from it?

A. $25.00.

40. What is the house rented by Mrs. Bell to Hunt?

A. $1500.00.

41. What leasage does the University receive from that?

A. $25.00.

200 42. What is the value of the house rented by Mrs. Holland to Sneed?

A. About $1200.00, I suppose.

43. What leasage does the University receive from that?

A. $25.00.

44. What is the value of the house rented by Fairbanks to Miss Harrison?

A. I do not think it is worth more than $1000.00, may be about $1200.

45. What leasage does the University receive for that?

A. $25.00

46. You are a lessee under the University yourself, are you not?

A. No sir.

47. State whether or not it is a fact that the leases issued to lessees outside their Reservation are in exactly the same form as the leases inside the reservation?

A. They are.

48. State whether or not the form of lease that is issued now is the same as has been issued by the University from the beginning?

A. Yes sir.

49. The scheme to create a municipal government to be controlled by the University was abandoned years ago, was it not?

A. I cannot answer that question; I do not know. I have nothing to do with that part of the work.

50. State whether or not it is a fact that, in a number of instances, the University has purchased from lessees the interest of the lessees in property leased?

A. It has in some cases.

51. On what property does the University of the South pay taxes and how is it assessed?

A. It has paid taxes on lands outlying the 1000-acre-reservation. The assessment has been fixed by the tax assessor.

52. State whether or not the property is simply assessed as so many acres of land at so much per acre?

A. It has generally been assessed as so many acres of land and so much cleared land, until within a very few years, the assessor told me that was unnecessary. So it has lately been termed as so many acres of land.

53. The property leased outside of the reservation is not assessed for taxation as houses and lots?

A. It is not.

201 54. In the assessment there is no separate designation of these leased lots, is there?

A. Not since the time I spoke of, when the assessor told me that he changed it himself.

55. Please give, approximately, the number of people, residents of Sewanee, who are directly connected with the University, including teachers, students, whose homes are in Sewanee, and the officers and regular employees of the University?

A. There are forty teachers and about the students, I do not know, for I have never thought of that question.

56. A great deal of timber is shipped from Sewanee, is it not?

A. I believe so.

57. Sewanee is the principal market and trading point for a great number of people living in that section, engaged in the timber business, it it not?

A. Now, sir; I do not think there are a great many people engaged in the timber business, who make their living in the timber business, few, I should say.

58. State whether or not it is a fact that by far the larger part of the population of that district, who live outside of Sewanee, are engaged or connected with the timber business in some manner?

A. I do not know, sir.

59. State whether or not Sewanee is the principal market for and trading point for a large number of people who live on the mountain outside of Sewanee and in the valleys and coves near by?

A. It is the market, but not the trading place of these people.

60. The merchants and business men of Sewanee do not close up their respective places of business during the winter vacation of the University, do they?

A. They do not.

61. How long is the vacation of the University of the South?

A. Generally about twelve weeks.

62. During that time very few of the teachers or students or employees of the University stay in Sewanee, do they?

A. Ordinarily most of the employees and most of the teachers.

63. State whether or not there is a valuable seam of coal under the University domain?

A. I do not believe it is a valuable seam of coal. It is a very thin seam.

202 64. State whether or not you are agent for an insurance company?

A. I am.

65. State whether or not, as such agent, it is your custom to insure the buildings of this leasehold property for the lessees?

A. It is. I do insure the property, for some of them.

66. State whether or not in insurance policies written by you you described the buildings as the property of the lessees located on the domain of the University of the South?

A. I do so state it.

(Objected to by the University of the South, because the witness, in acting as insurance agent is not the agent of the University of the South and a contract entered into between the Insurance Company and the lessee is not competent evidence against the title or ownership of the University of the South to the property. Nor is the University of the South responsible for the statements written in the insurance policies by an insurance agent.)

67. In every instance where property has been destroyed by fire, the lessees have collected from the insurance company — their policies, have they not?

A. They have, but they have used that money in putting better buildings on the lots than the ones that were destroyed.

68. The witness here states that he wishes to make a correction in his answer to the question in reference to the signature of the Vice-Chancellor to the leasehold contracts. Up to the time Dr. Wiggins was appointed Vice-Chancellor, these leases were not signed by the Vice-Chancellor and these leases executed to that time were not so signed. Dr. Hodgson was both Vice-Chancellor and Commissioner of Buildings and Lands. Since Dr. Wiggins has been Vice-Chancellor he has signed all the leases. He requires all leases to be signed by himself as well as by the Commissioner of Buildings and Lands. At all times the lease contracts have been signed by the Commissioner of Buildings and Lands, by the authority of the Vice-Chancellor.

Signature waived by consent.

SPEARS & LYNCH,
CROWNOVER & CRABTREE,
For Complainants.
LYNCH & PHILLIPS,
For Defendants.

Endorsed: Filed May 11, 1907. H. M. Doak, Clerk.

The following exhibit "A," List etc., of tenants, to R. M. Du Bose's deposition, which is also, by stipulation, Exhibit "B" to Dr. B. L. Wiggins' deposition, was filed viz.:

Exhibit "A" to Du Bose.

" "D" " Wiggins.

No. 3481. Equity.

University of the South et al.
vs.
James R. Jetton et al.

List of Tenants. The University of the South.

With a Statement of the Date of the Lease, the Period, Renewals and Amount.

Lessee.	Value of improvements.	Amount.	Date.	Renewals.	Period.
C. T. Quintard	.....	$1.00	Aug. 11, 1869.....	2	33 Years.
A. Gipson	500.	1.00	Feb. 1st, 1871.....	..	Life Tenent.
Mrs. T. Hodgson	1000.	1.00	Jan. 1st, 1875.....	2	33 Years.
S. C. Hoge	Garden	2.00	Apr. 1st, 1876.....	2	10 Years.
S. M. Barton	.....	5.00	Aug. 1st, 1873.....	2	33 Years.
W. M. Green	500.	5.00	Jun. 4th, 1867.....	2	33 Years.
Miss S. B. Elliott	1500.	5.00	Sep. 1st, 1870.....	2	33 Years.
S. M. Barton	.....	5.00	Aug. 1st, 1873.....	2	33 Years.
C. Piggot	1000.	5.00	Mar. 10th, 1871.....	2	33 Years.
W. P. Du Bose	.....	5.00	Ap. 1st, 1873.....	2	33 Years.
W. B. Nauts	1000.	5.00	July 28th, 1874.....	2	33 Years.
Mrs. Galleher	500.	5.00	Sep. 1st, 1879.....	2	33 Years.
E. Kirby-Smith	1000.	5.00	Jan. 1st, 1880.....	2	33 Years.

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Exhibit "A" Du Bose, List of Tenants, etc.—Continued.

Lessee.	Value of improvements.	Amount.	Date.	Renewals.	Period.
D. Shepherd	500.	5.00	Mar. 27th, 1885	2	33 Years.
T. F. Gailor	500.	5.00	Ap. 1st, 1884	2	33 Years.
Mrs. John McGrady	1000.	5.00	Jun. 1st, 1885	2	33 Years.
R. L. Colmore	1000.	5.00	May 1st, 1887	2	33 Years.
Quincy Ewing	500.	5.00	Feb. 1st, 1891	2	33 Years.
A. R. Gray	1500.	5.00	May 1st, 1903	2	33 Years.
W. B. Hall	1500.	5.00	Jan. 1st, 1905	..	33 Years.
S. Sutherland	100.	6.25	Sep. 1st, 1870	..	10 Years.
W. H. Wheat	.....	6.25	Feb. 1st, 1872	..	Tenant at Will.
S. Richardson	300.	6.25	Jul. 1st, 1880	..	33 Years.
R. Louzinger	400.	6.25	Jul. 1st, 1883	..	10 Years.
Mrs. Norwood	.....	6.25	Jan. 1st, 1893	..	Tenant at Will.
Susan O'Dier	.....	6.25	Jan. 1st, 1898	..	" " "
Henry Schneider	300.	10.00	Feb. 1st, 1871	2	10 Years.
W. G. Arnold	300.	12.50	Ap. 13th, 1888	2	10 Years.
John G. Arn	300.	12.50	Mar. 1st, 1871	2	10 Years.
Z. H. Rice	300.	12.50	Jul. 1st, 1894	2	10 Years.
C. Ruef	500.	12.50	Jul. 1st, 1869	2	10 Years.
G. R. Fairbanks	500.	12.50	Jul. 1st, 1869	2	10 Years.
Dean Statum	300.	12.50	Jul. 1st, 1895	2	10 Years.
A. Mansfield	.....	12.50	Sep. 1st, 1870	2	10 Years.
F. Short	300.	12.50	Jul. 1st, 1870	2	10 Years.
Wm. Ricketts	250.	12.50	Jul. 1st, 1870	2	10 Years.
J. B. Powell	500.	12.50	Oct. 21st 1885	2	10 Years.
G. R. Fairbanks	300.	12.50	Oct. 1st, 1870	2	10 Years.
Dock. Farris	100.	12.50	Jul. 1st, 1871	2	10 Years.

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D. I. Disheroon	.....	12.50	Mar. 1st, 1870	2	10 Years.
W. T Garner	250.	12.50	Aug. 1st, 1871	2	10 Years.
S. L. Holland	500.	12.50	Aug. 10th, 1871	2	10 Years.
C. Ruef	500.	12.50	Sep. 1st, 1871	2	10 Years.
H. W. Brazelton	.....	12.50	Jan. 1st, 1872	2	33 Years.
J. H. Fischer	300.	12.50	Jan. 1st, 1872	2	10 Years.
White Campbell	300.	12.50	Nov. 20th, 1871	2	10 Years.
C. D. Gipson	500.	12.50	Feb. 1st, 1872	2	33 Years.
Mrs. J. C. Powell	U. of S.	12.50	Feb. 10, 1872	2	33 Years.
Mrs. Wallace Hawkins	300.	12.50	Mar. 1st, 1872	2	10 Years.
Mr. John Status	300.	12.50	Mar. 30, 1872	2	10 Years.
A. S. Johnson	500.	12.50	Ap. 4th, 1872	2	10 Years.
Mrs. R. E. Stewman	300.	12.50	May 1st, 1872	2	10 Years.
W. J. Prince	.....	12.50	Dec. 1st, 1873	2	10 Years.
O. Fischer	500.	12.50	Ap. 1st, 1875	2	10 Years.
O. Fischer	200.	12.50	Aug. 1st, 1872	2	10 Years.
T. J. Harrison	300.	12.50	Ap. 1st, 1876	2	10 Years.
M. Finney	.....	12.50	May 1st, 1877	2	10 Years.
Robt. Riley	300.	12.50	Nov. 9th, 1876	2	10 Years.
I. T. Walker	100.	12.50	Ap. 1st, 1877	2	10 Years.
Phi Delta Theta	500.	12.50	Sept. 1st, 1884	2	33 Years.
S. A. E. Fraternity	500.	12.50	Dec. 11th, 1884	2	33 Years.
Mrs. Thomas Gipson	300.	12.50	May 1st, 1887	2	10 Years.
A. Mamsfield	.....	12.50	Jan. 1st, 1885	..	Tenant at Will.
Mrs. McKay	500.	12.50	May 1st, 1885	2	10 Years.
Delta Tau Delta	500.	12.50	Jan. 1st, 1885	2	33 Years.
Mansfield & Bonner	.....	12.50	Oct. 24th, 1885	..	Tenant at Will.
Mansfield & Bonner	.....	12.50	May 1st, 1886	..	Tenant at Will.

Lessee.	Value of improvements.	Amount.	Date.	Renewals.	Period.
J. M. Castleberry	500.	12.50	May 1st, 1887	2	10 Years.
Collins & Riley	.....	12.50	May 23d, 1906	2	10 Years.
J. B. Sutherland	.....	12.50	Oct. 1st, 1903	2	10 Years.
Mrs. Messick	400.	12.50	Jul. 1st, 1888	2	10 Years.
Lee Finey	.....	12.50	Aug. 1st, 1888	2	10 Years.
Mrs. M. C. Jackson	.....	12.50	Aug. 1st, 1888	2	10 Years.
W. L. Myers	250.	12.50	Oct. 16th, 1889	2	10 Years.
S. L. Holland	250.	12.50	Jan. 20th, 1890	2	10 Years.
J. P. Prince	200.	12.50	Oct. 1st, 1890	2	10 Years.
J. E. Rachielles	200.	12.50	Oct. 1st, 1890	2	10 Years.
Fred. Grubenstein	200.	12.50	Oct. 1st, 1890	2	10 Years.
R. Mitchell	100.	12.50	Dec. 15th, 1890	2	10 Years.
S. H. Black	300.	12.50	Nov. 7th, 1898	2	10 Years.
S. A. Erwin	.....	12.50	Jan. 1st, 1893	2	10 Years.
J. O. Sutherland	200.	12.50	May 1st, 1893	2	10 Years.
Mrs. P. Riley	200.	12.50	Mar. 1st, 1895	2	10 Years.
Alice Prince	200.	12.50	Feb. 1st, 1895	2	10 Years.
W. H. Montgomery	.....	12.50	Jan. 1st, 1897	1	10 Years.
A. Mansfield	.....	12.50	May 1st, 1896	2	10 Years.
Mrs. S. E. Johnson	500.	12.50	Ap. 26th, 1873	2	10 Years.
Wm. Zaug	300.	12.50	Jan. 1st, 1901	2	10 Years.
L. Terrell	.....	12.50	Nov. 1st, 1901	2	10 Years.
M. Terrell	.....	12.50	Jan. 1st, 1902	2	10 Years.
E. Kuntz	.....	12.50	Jul. 1st, 1901	2	10 Years.
R. Biddle	500.	12.50	Ap. 1st, 1904	..	Tenant at Will.

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S. Kirby-Smith	300.	12.50	Jan. 1st, 1904	2	10 Years.
M. Knott	300.	12.50	Aug. 1st, 1906	2	10 Years.
Mrs. A. Van Vlieck	.....	12.50	Jan. 1st, 1905	..	Tenant at Will.
Sam Bierry	250.	14.50	Mar. 1st, 1871	2	10 Years.
W. P. Anderson	300.	15.00	Dec. 1st, 1871	2	10 Years.
R. J. Gilespie	300.	17.00	Sep. 1st, 1886	2	33 Years.
J. H. Collins	300.	18.00	Oct. 14th, 1884	2	10 Years.
A. T. O. Fraternity	300.	25.00	Jul. 1st, 1880	2	33 Years.
Miss E. Douglas	300.	25.00	Dec. 1st, 1881	1	25 Years.
G. R. Fairbanks	1000.	25.00	Jan. 1st, 1868	2	33 Years.
Mrs. M. Hofer	300.	25.00	Jul. 1st, 1869	2	33 Years.
B. W. Wells	1000.	25.00	Dec. 1st, 1869	2	33 Years.
Tom. Hamilton	800.	25.00	Jan. 1st, 1870	2	33 Years.
S. S. Cotton	500.	25.00	Jul. 1st, 1871	2	33 Years.
F. A. De Rossett	1000.	25.00	Oct. 17, 1870	2	33 Years.
F. O. Barnwell	1000.	25.00	Nov. 10th, 1870	2	33 Years.
Mrs. Telfair Hodgson	1000.	25.00	Jan. 1st, 1871	2	33 Years.
Mrs. W. S. Lovell	.....	25.00	Dec. 1st, 1869	2	33 Years.
J. B. Powell	500.	25.00	Feb. 1st, 1871	2	33 Years.
C. Ruef	200.	25.00	Mar. 1st, 1871	2	33 Years.
Mrs. M. A. Wildmerding	.....	25.00	Jul. 20th, 1871	2	33 Years.
S. L. Holland	300.	25.00	.....	2	33 Years.
I. Conger	.....	25.00	Aug. 1st, 1871	2	33 Years.
Mrs. E. C. Legare	1000.	25.00	Jun. 1st, 1871	2	33 Years.
Mrs. M. J. Selden	1500.	25.00	Dec. 1st, 1871	2	33 Years.
Miss M. E. Huger	1000.	25.00	Aug. 20th, 1871	2	33 Years.
P. S. Brooks	1000.	25.00	Sep. 1st, 1871	2	33 Years.
W. J. Prince	1000.	25.00	Sep. 1st, 1871	2	33 Years.
Mrs. H. A. West	1000.	25.00	Dec. 14, 1871	2	33 Years.
W. C. Loony	600.	25.00	Nov. 1st, 1871	2	33 Years.

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Exhibit "A" Du Bose, List of Tenants, etc.—Continued.

Lessee.	Value of improvements.	Amount.	Date.	Renewals.	Period.
J. C. Ruef	200.	25.00	Feb. 12th, 1871	2	33 Years.
Miss L. Wadhams	500.	25.00	Ap. 4th, 1872	2	33 Years.
A. Lebrovitz	.....	25.00	Ap. 20th, 1872	2	33 Years.
H. A. Gregory	1000.	25.00	Jun. 4th, 1872	2	33 Years.
J. B. Elliott	1000.	25.00	Dec. 1st, 1872	2	33 Years.
Mrs. S. C. Hoge	600.	25.00	Ap. 1st, 1873	2	33 Years.
Miss M. L. Porcher	1000.	25.00	Jan. 1st, 1873	2	33 Years.
Collins & Riley	U. of S.	25.00	Feb. 28th, 1903	2	33 Years.
Miss A. C. Mayhew	.....	25.00	May 1st, 1873	2	33 Years.
J. A. Satterwhite est	.....	25.00	Ap. 1st, 1873	2	33 Years.
Miss Grace E. Hardy	1000.	25.00	Jul. 1st, 1874	2	33 Years.
W. P. Corley	1000.	25.00	Jul. 1st, 1873	2	33 Years.
Mrs. M. C. Wicks	2000.	25.00	Jul. 1st, 1872	2	33 Years.
C. Ruef	200.	25.00	Jan. 1st, 1876	2	33 Years.
C. S. Judd	500.	25.00	Jan. 1st, 1876	2	33 Years.
Mrs. F. A. Elmore	1000.	25.00	Nov. 1st, 1879	2	33 Years.
Mrs. S. D. Thurmond	500.	25.00	Jun. 1st, 1884	2	33 Years.
205					
Phi Delta Theta Frat	500.	25.00	Jan. 1st, 1886	2	33 Years.
Mrs. Stanley Bell	500.	25.00	Jul. 1st, 1886	2	33 Years.
Mrs. A. L. Hall	500.	25.00	Jun. 1st, 1884	2	33 Years.
Miss Mary Miller	500.	25.00	Jan. 1st, 1887	2	33 Years.
Mrs. E. F. Reese	500.	25.00	Jan. 1st, 1887	2	33 Years.

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Miss S. E. Milhado	500.	25.00	May 1st, 1867	2	33 Years.
Mrs. S. K. Johnson	500.	25.00	May 1st, 1887	2	33 Years.
Mrs. M. W. Van Ness	Open Lot.	25.00	May 1st, 1887	2	33 Years.
Mrs. M. W. Van Ness	500.	25.00	May 1st, 1887	2	33 Years.
Kappa Alpha Frat.	500.	25.00	Jun. 1st, 1887	2	33 Years.
Mrs. E. C. Sutton	1000.	25.00	Aug. 25th, 1887	2	33 Years.
Sisters St. Mary	1000.	25.00	Sep. 1st, 1888	2	33 Years.
Mrs. Cheape	500.	25.00	Jul. 13th, 1887	2	33 Years.
Mrs. O. C. K. Race	1000.	25.00	Jul. 1st, 1892	2	33 Years.
Mrs. S. D. Smedes	500.	25.00	May 1st, 1894	2	33 Years.
Mrs. M. M. Betts	500.	25.00	Oct. 22nd, 1900	2	33 Years.
Dr. F. C. Ewing	500.	25.00	Aug. 10th, 1901	2	33 Years.
Mrs. O. C. K. Race	Open Lot.	25.00	Aug. 10th, 1901	2	33 Years.
Pi Kap. Al. Frat.	500.	25.00	Jan. 1st, 1901	2	33 Years.
Mrs. C. Herrington	.....	25.00	Jun. 1st, 1904	..	Tenant at Wi-
Dr. J. S. Cain	500.	25.00	Ap. 20th, 1905	1	31½ Years.
Kappa Sigma Frater.	500.	25.00	Jul. 1st, 1905	2	33 Years.
Dr. A. M. Moore	1000.	25.00	Ap. 10th, 1906	2	33 Years.
John Powell	200.	25.00	Jun. 1st, 1870	2	33 Years.
Mrs. Ed. Kirby-Smith, Jr.	1000.	30.00	May 1st, 1887	2	33 Years.
Mrs. C. M. Fulmer	1500.	30.00	Aug. 8th, 1905	2	33 Years.
Mrs. Anna Mansfield	1500.	30.00	Sep. 26th, 1905	2	33 Years.
G. R. Fairbanks	1500.	37.50	Aug. 16th, 1869	2	33 Years.
H. Winton	50.	5.00	Jul. 1st, 1884	2	10 Years.
Millie Holder	75.	6.25	Jun. 1st, 1880	2	10 Years.
C. Rose	.....	6.25	Jan. 1st, 1883	2	10 Years.
W. Henderson	.....	6.25	Jan. 1st, 1896	..	Tent. at Wil-.
B. Bryan	.....	6.25	Aug. 1st, 1900	..	" " "
R. Du Bose	100.	12.50	Oct. 29th, 1879	2	10 Years.

Exhibit "A" Du Bose, List of Tenants, etc.—Continued.

Lessee.	Value of improvements.	Amount.	Date.	Renewals.	Period.
A. Childress	.....	12.50	Aug. 1st, 1887.....	..	Tent. at Wil.
S. Smith	.....	12.50	May 1st, 1886.....	..	" " "
R. Mosely	.....	12.50	Jul. 1st, 1893.....	..	" " "

Recapitulation.

Total Number of Lessees	176
White	167
Colored	9
Actual Non-Residents	9

Four reside at Sewanee for several months of the year. Four originally resided here. One got possession of property in payment of debt.

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206 The following memorandum opinion was filed upon the final hearing, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

This case is now before the court for a final decree. It is quite evident that the case presents nothing new or different from what was fully discussed and considered upon the application for a preliminary injunction. The memorandum opinion then pronounced sufficiently indicates my views of this case. The record as now made up contains just such facts as were then in the record and admitted to be the true situation of the case. I have no reason to change the conclusion at which I arrived on that hearing, and, it accordingly seems only necessary to say that I think the plaintiff is entitled to the relief sought and to a final injunction and it is so ordered. The costs, of course, will go with the result of the suit, against the defendant.

CLARK, *Judge*.

Endorsed: Filed July 20, 1907, H. M. Doak, Clerk.

207 The following decree was rendered and entered of record, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON, State Rev. Agent, *et al.*

Be it remembered that this cause came on to be heard before the court on this the 13th day of August, 1907, upon the entire record of the cause and the argument of counsel on this and former days of the court; and upon full consideration of the entire record the court is of opinion that the complainant is entitled to the relief sought by the bill and that the temporary injunction heretofore granted should be made final and perpetual.

It is, therefore, adjudged and decreed by the court that the defendant, J. R. Jetton, State Revenue Agent, David S. Osborne, Trustee of Franklin County, and the said County of Franklin, be, and they are, perpetually enjoined from assessing, or attempting to assess and tax the property and leasehold interest as described and complained of in the bill, the same being situated upon the one thousand acres of land which belongs to the complainant, all as set forth and as prayed for in the bill.

It is further adjudged that said property and leasehold interest are not subject to assessments, or to the levy and collection of taxes, as attempted and as fully set out in the bill at length, and a final and

perpetual injunction will accordingly issue as prayed for in the bill. The defendant Jetton will pay one-half of the costs of this cause, and the defendant the County of Franklin the remaining one-half, for which execution may issue.

The memorandum opinion of this court, heretofore filed, on the hearing for a preliminary injunction, shows with sufficient fullness the grounds on which the opinion and decree of the court proceed and the extent and limits of the ruling and adjudication, and that opinion is referred to and made a part of the record.

Aug. 14/07.

Enter this.

CLARK, *Judge*.

Endorsed: Filed August 14, 1907. H. M. Doak, Clerk.

Entered "FF," p. 312.

208 Upon the allowance of the decree as drawn by complainant, the following order was made and entered, viz.:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

In this cause come the defendants and except to the action of the court in overruling their motion for a modification of the opinion and holding of the court, (filed herein on November 1st, 1905), upon the argument of the motion for temporary injunction and hearing of the demurrer, so as to permit the authorities of the State of Tennessee and County of Franklin to make an assessment upon the interests of the lessees of complainant University of the South, under their several leases referred to in the original bill, but restraining the collection of the taxes so assessed pending this litigation; and in overruling defendant's motion to require complainant University of the South to enter into an injunction bond in the penalty of the taxes sought to be enjoined by it as a condition to the issuance of the temporary injunction prayed by it; and in overruling and disallowing the exceptions filed by defendants on December 31st, 1906, to the form of decree prepared by counsel for complainants granting the temporary injunction without bond, which said decree was ordered to be entered and was entered in this cause on January 18th, 1907, which said objections so filed on December 31st, 1906, are here referred to and made a part of the record in this cause. The several motions hereinbefore referred to were made by defendants and considered by the court along with the decree entered herein on January 18th 1907, and were overruled by the court as above stated, to which action of the court defendants then excepted. This order and decree should have been entered along with said decree of January 18th, 1907, and is now entered for then.

Enter.

CLARK, *Judge*.

Entered "FF," page 172, Feb. 2, 1907.

209 The following stipulative order was made and entered, viz.:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

In this cause it is stipulated and agreed by and between the counsel for both parties that the depositions which have been taken and filed in this cause before the filing of the replication in the same, may be read as evidence the same as if they had been taken and filed after the filing of such replication, and subject alone to only such exceptions as if the replication had been filed before the said depositions were taken and filed.

JOHN J. VERTREES,
Counsel for Complainant.
O. K. CATES, JR.,
Attorney General.

Enter this.

CLARK, *J.*

The following order was made and entered of record, upon the 3d day of October, 1907, viz.:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
J. R. JETTON ET AL.

In this cause it appearing that the map of the University of the South's domain, filed in this cause, cannot be copied, it is ordered that the clerk transmit the original on file, in the transcript of the record to the Supreme Court of the United States, as part of the record.

210 The following petition for appeal to the Supreme Court of the United States was filed, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH, Plaintiff,
vs.
JAMES R. JETTON, Revenue Agent of the State of Tennessee, DAVID S. OSBORNE, Trustee of the County of Franklin, Tennessee, and THE COUNTY OF FRANKLIN, TENNESSEE, Defendants.

Petition for Appeal to the Supreme Court of the United States.

The above-named defendants, James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin

County in the State of Tennessee, and the County of Franklin, conceiving themselves aggrieved by the final decree made and entered on the 14th day of August, 1907, in the above-entitled cause, do hereby pray an appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

This 17th day of September, 1907.

LYNCH & PHILLIPS,
Solicitors for Defendants Osborne and Franklin County.
THOMAS R. LYTLE,
Solicitor for Defendant Jetton.
CHAS. T. CATES, JR.,
Attorney General of Tennessee,
Appearing for Defendant Jetton.

The foregoing claim of appeal is allowed this 17th day of September, 1907.

CLARK, *J.*

Endorsed: Filed Sept. 18, 1907. H. M. Doak, Clerk.

The following assignment of errors was filed, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH, Plaintiff,
vs.
JAMES R. JETTON, Revenue Agent of the State of Tennessee, DAVID S. OSBORNE, Trustee of the County of Franklin, in the State of Tennessee, and THE COUNTY OF FRANKLIN, in the State of Tennessee, Defendant.

Come now the defendants, James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of the County of Franklin, Tennessee, and the County of Franklin in the State of Tennessee, by their attorneys, and pray an appeal from the final decree of this court, rendered in the above-entitled cause on the 14th day of August, 1907, to the Supreme Court of the United States, and assign for error:

211 First. That the court erred in overruling the demurrer (except the second ground thereof) of said defendants, and in sustaining jurisdiction of this case, because—

(*a*.) This court had no jurisdiction to hear and determine this cause, for the reason that both the plaintiff and said defendants are citizens of the State of Tennessee, and it is not shown in the bill that plaintiff's rights under the laws of the United States were, or were about to be violated by reason of the matters set forth in said bill; in other words, no federal question is made by said bill.

(*b.*) The bill does not make a case cognizable in a court of equity, and said bill is without equity on its face.

(*c.*) The proceedings sought to be enjoined were, in fact and legal effect, a suit instituted by the defendant Jetton for and on behalf of the State of Tennessee and Franklin County before and in a state tribunal, a court specially created by chapter — of the Acts of the General Assembly of Tennessee for the year 1903, with due notice to the parties against whom said suit and proceedings were brought, according to the laws of the State of Tennessee, to assess and collect lawful taxes due from said parties named in said bill, and in such case this court was and is without power to grant an injunction to enjoin, restrain or interfere with said proceedings in said state court.

(*d.*) This court was without authority and jurisdiction to hear and determine this cause, for the reason that this suit, in so far as it is prosecuted against defendant Jetton, one of the revenue agents of the State of Tennessee, is, in legal effect, a proceeding against the State of Tennessee to enjoin her from prosecuting her suit instituted before the Trustee of Franklin County, sitting as a special court, or tribunal, to assess taxes due said state from certain parties other than the plaintiff University of the South.

(*e.*) Plaintiff University of the South had full and complete remedy at law, and under the laws of Tennessee, either by appeal and certiorari duly provided by the statutes and laws of the State of Tennessee, or by payment under protest of the taxes involved and suit to recover the same, under and in the manner provided by the statutes of Tennessee, which afford a complete and adequate remedy to every taxpayer, and forbid the issuance of an injunction to restrain or interfere with the due and proper collection of such taxes.

(*f.*) It appears upon the face of the bill that no taxes were sought to be assessed against the land owned by plaintiff University
212 of the South, and that the property and land of the University of the South described in the bill is, under and by virtue of the laws of the State of Tennessee, not subject to taxation, but is exempt.

(*g.*) It appears upon the face of the bill that the proceedings instituted by defendant Jetton before the defendant Osborne, Trustee of Franklin County, sitting as a special court and tribunal for the assessment of delinquent taxes, were not against plaintiff University of the South, but were against other persons, some of whom were joined as plaintiffs in this cause, but whose property interests, under the several leases held by them from plaintiff University of the South, were not exempt from taxation, and are legally assessable for taxation under the laws of the State of Tennessee.

Second. The court erred in granting the temporary injunction restraining defendants from assessing the property rights which the several lessees of plaintiff University of the South had in and to the improvements erected by them and each of them, under their respective leases upon the property owned by plaintiff University of the South.

Third. The court erred in refusing to require plaintiff University of the South to execute a good and sufficient injunction bond to cover the amount of the taxes sought to be enjoined, or in refusing,

in lieu of such bond, to permit an assessment to be made of the taxes in controversy against the property of the lessees of plaintiff, and restrain the collection thereof until the determination of this cause.

Fourth. The court erred in holding and decreeing that the property rights in and to the improvements erected by the several lessees of plaintiff under their respective leases, referred to in the bill, are not subject to assessment for taxation, or to the levy and collection of taxes therefrom, as set out in the final decree.

Fifth. The court erred in making the temporary injunction granted by it final and perpetual, and erred in perpetually enjoining defendants from assessing or attempting to assess and tax the property rights and leasehold interests which the several lessees of plaintiff have in and to the improvements erected by them under their respective leases upon the property of plaintiff.

Sixth. The court erred in perpetually enjoining defendants from assessing or attempting to assess and tax the property rights and leasehold interests of the several lessees of plaintiff, because, in any event, the only assessments sought to be enjoined by the bill in this cause were those for the years 1903, 1904, 1905, and 1906,
213 and the claim for injunction was predicated alone upon the particular provisions of the Tennessee Assessment Act of 1903, which plaintiff claimed violated the constitution of the State of Tennessee and the Constitution of the United States.

Seventh. The court erred in holding that the Tennessee Assessment Act of 1903 (Chapter 258) is in violation of the federal constitution.

Eighth. The solemn answer of the defendants, as well as the proof, shows that the proceedings instituted by defendant Jetton as State Revenue Agent before defendant Osborne, sitting as a special court or tribunal for the back-assessment of taxes, were not intended in any way to affect, nor did they in any way affect, plaintiff, and that no claim is made either by the State of Tennessee or County of Franklin that the property of plaintiff (within the area described in the bill) is liable for taxation. An express disclaimer is made of any claim of right to tax the property of plaintiff, or that any taxes levied upon the property rights of the lessees of plaintiff would in any way affect or be a lien upon the property of plaintiff. So that, the court erred both in granting plaintiff any relief and in failing to dismiss said bill.

Wherefore defendants pray that the decree of the said Circuit Court be reversed.

LYNCH & PHILLIPS,
THOMAS B. LYTLE,
Solicitors.
CHAS. T. CATES, JR.,
Attorney General of Tennessee.

Endorsed: Filed Sept. 18, 1907. H. M. Doak, Clerk.

The following bond for appeal was executed and filed, viz:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH
vs.
JAMES R. JETTON, State Revenue Agent, *et al.*

Bond for Appeal to the Supreme Court of the United States.

Know all men by these presents: That we, James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin County, Tennessee, and the County of Franklin in the State of Tennessee, as principals, and A. L. Todd, and John G. Gardner, as sureties, are held and firmly bound unto the University of the South in the full and just sum of one thousand dollars to be paid the said University of the South, its certain attorneys, successors or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, successors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of September, 1907.

Whereas, lately at a Circuit Court of the United States for
214 the Middle District of Tennessee, in a suit depending in said court between the University of the South, plaintiff and James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin County, Tennessee, and the County of Franklin, defendants, a decree was rendered against the said defendants, and the said defendants having obtained an appeal and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit and a citation directed to the said University of the South, citing and admonishing it to be and appear at the session of the Supreme Court of the United States to be holden in the City of Washington on the 17th day of October, 1907.

Now, the condition of the above obligation is such, that, if the said James R. Jetton, David S. Osborne, and County of Franklin shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

In testimony whereof we do hereunto sign our names and set our seals on the day and date first above written.

JAMES R. JETTON,
D. S. OSBORNE, *Trustee.*
FRANKLIN COUNTY,
By FRANK LYNCH,
County Judge.
A. L. TODD,
JOHN G. GARDNER,
Sureties.

This bond is approved.
CLARK, *J.*

Endorsed: Filed Sept. 18, 1907, H. M. Doak, Clerk.

The following order grant- — appeal was made and entered of record, to-wit:

No. 3481. Equity.

UNIVERSITY OF THE SOUTH, Plaintiff,

vs.

JAMES R. JETTON, Revenue Agent of the State of Tennessee, DAVID S. OSBORNE, Trustee of Franklin County, Tennessee, & THE COUNTY OF FRANKLIN, in the State of Tennessee, Defendants.

Now comes James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin County in the State of Tennessee and the County of Franklin, defendants in the above-entitled suit and file their assignments of errors and their petition for an appeal from the final decree herein to the Supreme Court of the United States at Washington and for reasons satisfactory to the court appearing, said appeal is hereby granted and allowed, and a transcript of the record, proceedings and papers upon which
215 said final decree was made, duly authenticated, is hereby ordered to be sent to the Supreme Court of the United States, as prayed for in the petition for appeal.

This 17th day of September, 1907.

Enter this.

CLARK, *J.*

The following citation was issued and service acknowledged, viz:

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the University of the South, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington within thirty days from the date of this writ, pursuat*n* to an appeal duly *duly* allowed by the *the* Circuit Court for the Middle District of Tennessee and filed in the clerk's office in said court on the 18th day of September, 1907, in a case wherein James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin County in the State of Tennessee, and the County of Franklin are appellants and y-u are the appellees to show cause, if any, why the decree rendered against said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to said appellants in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of *of* the Supreme Court of the United States, this 17th day of September, 1907.

C. D. CLARK, *Judge.*

Service of a copy of this citation is hereby admitted and accepted for and on behalf of appellee, University of the South, on this the 18th day of September, 1907.

SPEARS & LYNCH,
Solicitors for Appellee.

I, H. M. Doak, clerk of the Circuit Court of the United States for the Middle District of Tennessee, hereby certify that the foregoing is a true, perfect and complete copy of the record in the above-styled cause, as the same is on file or of record in my office.

In witness whereof I have hereunto signed my name and affixed the seal of the court, at my office in Nashville, Tennessee and the Middle District thereof, this the 5th day of October, A. D., 1907.

[Seal Circuit Court U. S., Middle District Tenn.]

H. M. DOAK, *Clerk.*

Endorsed on cover: File No. 20,891. M. Tennessee C. C. U. S. Term No. 488. James R. Jetton, Revenue Agent of the State of Tennessee, David S. Osborne, Trustee of Franklin County, Tennessee, and The County of Franklin, appellants, *vs.* University of the South. Filed October 23d, 1907. File No. 20,891.

Office Supreme Court, U. S.
FILED.
OCT 31 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 488.

JAMES R. JETTON, REVENUE AGENT, &c., ET AL.,
APPELLANTS,

vs.

UNIVERSITY OF THE SOUTH.

MOTION TO ADVANCE.

CHARLES T. CATES, JR.,
Attorney General of Tennessee,
for Appellants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 28519

(20,891.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 488.

JAMES R. JETTON, STATE REVENUE AGENT, ET AL., APPELLANTS,

vs.

THE UNIVERSITY OF THE SOUTH, APPELLEE.

APPEAL BY JAMES R. JETTON, REVENUE AGENT OF THE STATE OF TENNESSEE, ET AL. FROM THE DECREE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

MOTION TO ADVANCE.

Come now James R. Jetton, revenue agent of the State of Tennessee, and The County of Franklin, in said State of Tennessee, the appellants in the above-entitled cause, by Charles T. Cates, Jr., Attorney-General of Tennessee, and move that this cause be advanced upon the docket of this court, to the end that it may be heard and argued at as early a day as can be fixed convenient to the court.

STATEMENT OF CASE.

The appellee, University of the South, is an educational institution, incorporated by the General Assembly of Tennessee in 1859, and is the owner of large bodies of land in Franklin county, Tennessee, one thousand acres of which are, under and by virtue of the charter of said appellee, as construed by the Supreme Court of Tennessee (University of the South *v.* Skidmore, 87 Tenn., 155), exempt from taxation.

Within the limits of said domain exempt from taxation, appellee laid off a townsite and subdivided it into lots, which it leased, for terms ranging from ten to thirty-three years, at a nominal ground rent to a large number—between 100 and 200—of persons who desired to erect thereon, for their own use, either for residential or business purposes, buildings of different kinds. Under the leases executed by appellee, the lessees agreed to pay all taxes and assessments upon the premises, and were the owners of the improvements erected upon the leased premises, but appellee might become the owner of these improvements at the termination of the respective leases by paying the value thereof to the lessee. More than 100 buildings or improvements have been erected by different lessees upon lots so leased to them by appellee.

Appellant, James R. Jetton, is one of the revenue aagents of the State of Tennessee, charged, among other things, with the duty of instituting proceedings to have assessed property omitted from taxation, and in accordance with the statute of Tennessee he, in August, 1906, instituted proceedings before the Trustee of Franklin County, on behalf of the State of Tennessee and the County of Franklin, against some of the lessees of appellee for the purpose of having assessed for taxation the value of the improvements owned by said lessees, and which had been erected by them upon the property of appellee, University of the South, within the domain exempt

to said University from taxation. Thereupon appellee, University of the South, and several of the lessees, all citizens and residents of the State of Tennessee, acting not only for themselves, but claiming to act on behalf of more than 100 lessees named in the bill, filed a bill in equity in the United States Circuit Court, at Nashville, for the Middle District of Tennessee against appellant Jetton, as one of the revenue agents of the State of Tennessee; David S. Osborne, Trustee of Franklin County, and the County of Franklin, seeking an injunction inhibiting and restraining the further prosecution of the proceedings which had been instituted before said trustee for the purpose of assessing the interest or value of the improvements belonging to the lessees of appellee University, as hereinbefore shown.

Appellants (defendants in the court below) interposed a demurrer to said bill, which was sustained, in so far as the lessee complainants were concerned, but overruled as to complainant University of the South, it being held that said University of the South had the right to maintain and prosecute the bill for the purposes therein set out.

A temporary injunction was granted by the Honorable C. D. Clark, one of the district judges of the United States, inhibiting appellants (defendants in the court below) from making any assessment whatsoever of the property rights of the lessees in the improvements erected by them, as hereinbefore stated; whereupon appellants moved for a modification of said injunction, so as to permit an assessment to be made in order to prevent the running of the statute of limitations in favor of said lessees, but continuing the restraining order against the collection of taxes *pendente lite*, and to require complainant to execute a good and sufficient injunction bond covering the taxes sought to be enjoined. Both motions were refused and the injunction was allowed to stand without bond.

Appellee, University of the South, contended in its bill that, under the provisions of the Tennessee assessment act

of 1903 (chapter 258 of the Acts of 1903), if the State of Tennessee and County of Franklin were permitted to levy and assess taxes upon the interests of the lessees in their improvements erected under their several leases, as aforesaid, upon the property of said appellee, such taxes when assessed would be a lien upon the fee owned by said appellee and thereby create a cloud upon appellee's title, and that therefore said act of 1903 was void, as being in conflict with the Federal Constitution, in that it violated appellee's charter right to exemption from taxation.

An answer was duly filed by the defendants in the court below, denying that either the State of Tennessee or the County of Franklin sought to tax any interest which appellee University had in the property in question, and denying that under the statutes of Tennessee, as construed by the Supreme Court of Tennessee, an assessment against the property rights of the lessees in the improvements erected by them upon the leased premises would in any way affect the rights of appellee University in and to the fee in said property, which it is admitted to be exempt from any species of taxation.

The proceedings sought to be enjoined by the bill were instituted by appellants for the purpose of bringing about an assessment for the years 1903, 1904, 1905, and 1906, for which years it is estimated that between $10,000 and $15,000 of revenue, State and county, is involved.

Under the aforesaid act of 1903 both the State and the counties of the State are limited, in the back assessment of property omitted from taxation, to a period of three years next before the institution of the proceedings to bring about an assessment.

At the hearing the court granted the relief prayed by the bill and made perpetual the temporary injunction granted by it, and forever inhibited and enjoined the State of Tennessee and County of Franklin from assessing the property interests and rights of the lessees in and to the property

erected and owned by them upon the premises leased from appellee University. In granting the relief sought by appellee, the Circuit Court held that said act of 1903 was void, as being in conflict with the Federal Constitution, in that it violated appellee's charter exemption.

From the decree of the Circuit Court of the United States for the Middle District of Tennessee the defendants therein, James R. Jetton, State revenue agent, as aforesaid, and the County of Franklin, duly prayed and were granted an appeal to this court; and, a transcript of the record and proceedings in the Circuit Court of the United States having been certified to this court, the cause has been duly docketed as No. 488.

REASONS FOR MOTION.

Appellants contend:

(1) That no Federal question is presented upon the record, in that both plaintiffs and defendants were citizens of the same State, and appellee's claim of exemption to the full limits of the thousand acres referred to in its charter was fully recognized by defendants as being protected by the Constitution of Tennessee, as construed by the Supreme Court of said State.

(2) That the Tennessee assessment act of 1903 has been declared invalid, and that the interests of the State of Tennessee in respect of its revenue requires that this cause be advanced and disposed of at the earliest reasonable time.

(3) That appellee University is not interested in the proceedings instituted by the State of Tennessee, through its revenue agent, to assess for taxes only the property rights of the lessees of said appellee in and to the improvements erected and owned by said lessees upon the property of appellee.

(4) That the injunction granted to appellee, while it effectually inhibits the State of Tennessee from proceeding to assess the property rights and interests of the lessees of said appellee—and proceedings had not been commenced against all of said lessees—does not suspend the running of the statute of limitations of three years, hereinbefore referred to, in favor of said lessees—against many of whom proceedings had not been instituted when the bill in this cause was filed; so that, if this case is not tried until it is reached regularly upon the docket, according to its number, and is then decided in favor of appellants, the statute of limitations will bar the State and county from proceeding to assess for taxation the property of said lessees for the years 1903 and 1904.

CHARLES T. CATES, JR.,
Attorney-General of Tennessee,
for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

JAMES R. JETTON, Revenue Agent, Etc., et al.,
Appellants,

vs. } No. 488

UNIVERSITY OF THE SOUTH,
Appellee.

BRIEF ON BEHALF OF APPELLANTS.

STATEMENT OF CASE.

This cause is before this court, on appeal, to review and reverse a decree sustaining and granting the relief sought by a bill in equity filed, in the Circuit Court of the United States for the Middle District of Tennessee, by appellee University of the South, an educational institution incorporated under the laws of Tennessee, and B. L. Wiggins and others named in the bill, as lessees of appellee—all citizens of the State of Tennessee—against appellants, also citizens of the same State, to enjoin the

prosecution of certain proceedings or suits instituted by appellant Jetton, one of the Revenue Agents of the State of Tennessee, before appellant Osborne, Trustee of Franklin County, sitting as a special court, against said Wiggins and others named in the bill, for the purpose of having valued and back-assessed for taxation the interests of said Wiggins and the other lessees in and to certain leaseholds and the improvements erected thereon by said lessees under written agreements of lease from appellee, the owner in fee of the leased premises—the interest of appellee therein being exempt from taxation.

The Bill.

The material averments of the bill are as follows:

The charter of the University of the South was granted by the General Assembly of Tennessee in 1858, and among the other powers, privileges or immunities therein contained, is the following:

"Section 10. *Be it further enacted*, That said University may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution, and the students thereof, from the intrusion of evil-minded persons who may settle near said institution; said lands, however, not to exceed 10,000 acres, 1,000 of which, including the buildings and other effects, and property of said corporation, shall be exempt from taxation so long as said lands belong to said University."

Rec., pp. 2-6.

As authorized by its charter, appellee acquired title to a large body of mountain land at Sewanee, in Franklin County, Tennessee, and in November, 1861, had surveyed out and laid off 1,000 acres of said land, which thereafter was known as the University Reservation, which appellee under its charter, as aforesaid, claimed to hold and held free from taxation.

Prior to 1887, appellee had, on the said Reservation, laid off a town site, called Sewanee, and leased a large number of lots for various terms from ten to thirty-three years, with renewal privileges, to persons agreeing to erect thereon buildings and improvements of a certain designated value, and the rentals derived from these leases were covered into the treasury of the University and used for the purposes for which it was created. Thereupon, the State of Tennessee and Franklin County attempted to assess to and against appellee University all of said 1,000 acres that had been leased by it to different persons, as above stated; whereupon, appellee University filed an original injunction bill in the Chancery Court of Franklin County against A. J. Skidmore, the then Trustee of said county, to enjoin him from assessing said property for State and county taxation, upon the ground that said property was still owned by and belonged to said University,

and was, therefore, exempt from taxation under the tenth section of its charter, above set out.

Rec., pp. 8, 49-56.

Whereupon, Franklin County filed an original bill in the nature of a cross bill in said cause, claiming the right to assess and back-assess said property, insisting that said University, by leasing out said property, had lost its right of exemption from taxation.

Rec., pp. 8, 57-63.

Issues were made under said original and cross bills, and upon the record submitted to the Chancellor he decreed that all of said leased property, except that occupied by the professors and officers of the University, was subject to taxation, but upon appeal to the Supreme Court of Tennessee the decree of the Chancellor was reversed and it was, in effect, held and decreed by the Supreme Court of Tennessee that the charter exemption "from taxation so long as said land belongs to" said University, remains in force so long as it retains the title thereto, and that it had not so far renounced title as to defeat the exemption by giving leases for from one to thirty-three years, with renewal options, to divers persons who had built up a village thereon—the annual rents being reserved and devoted exclusively to the purposes of the University. The record in said cause, which was entitled University of the

South v. Skidmore, Trustee, including the decree and opinion of the Supreme Court of Tennessee, was filed as an exhibit to the original bill in this cause. The decree of the Supreme Court of Tennessee is found in the printed record at pages 153 to 155, inclusive, and the opinion of said court is, as stated in the bill in this cause, reported and published under the style of—

University of the South v. Skidmore, 87 Tenn., pp. 155 et seq.

The bill further charges that "notwithstanding the holding of the Supreme Court of Tennessee that this contract of exemption was valid and applied to the property leased, as well as that actually occupied by the school buildings of the University," State Revenue Agent Jetton, appellant herein, as he was authorized to do under the statutes of Tennessee, caused to be issued by appellant Osborne, Trustee of Franklin County, the proper official charged with such duty, notices to the lessee complainants and about 160 other lessees of appellee University, to appear before said Trustee on the 13th day of August, 1906, for the purpose of being assessed and back-assessed upon their leasehold interests in said property for the years 1903, 1904, 1905 and 1906.

Rec., pp. 9-11.

The form of lease executed by appellee Univer-

sity to each of its several lessees was exhibited with the original bill in this cause, as a part of the record in the case of University of the South v. Skidmore, and is as follows:

Memorandum of an agreement made this — day of ——, A. D., — between the University of the South, party of the first part, ——, party of the second part; Witnesseth that the said party of the first part doth hereby lease to the said party of the second part all that certain lot and premises, situated at Sewanee, Franklin County, Tennessee, being part of the domain of the said university of the South and described as follows:

for a period — years, from said date, at an annual rental of —— dollars per year, payable each year in advance, and this lease being expressly made subject to the provisions of the charter, constitution and statutes of said University of the South, as well also to the regulations for leasing the domain of said University of the South, established by the Board of Trustees. And the said party of the sec-nd part agrees with the said party of the first part that — will pay the rent above specified in manner aforesaid, and all taxes and assessments upon said premises; —— doth further covenant and agree that during the said term hereby granted — will not, nor shall — heirs or assigns, sell or permit to be sold upon said premises hereby leased, any ale, beer, wine or any liquors whatever; nor allow any gambling of any description upon said premises; nor allow to be kept therein any billiard table, shooting gallery, or bowling alley, unless permission to keep the same shall have been given by the Commissioner of Buildings and Lands; nor suffer any business to be carried on injurious to the interests of the university; nor permit the erection thereon of any church, chapel or place of religious worship, without the consent in writing of the said University of the South.

And it is further agreed That the said premises shall not be sub-let nor this lease assigned without the consent in writing of the Commissioner of Buildings and Lands. And it is further covenanted and agreed that any violation of the above restriction and provisions shall cause this lease to end and determine, with a right to said party of the first part to re-enter upon said premises. And it is further agreed that in all cases of transfer
154 the University of the South shall have the refusal and at the expiration of the present term, the University of the South shall have the option of taking the premises by paying for all improvements made thereon, or may renew the lease for another term of — years, on such terms as may be agreed upon by the parties, respectively, and may also give a second renewal for — years; and in case the parties cannot agree upon the value of the improvements or the rental to be paid for the new term, the same shall be determined by arbitration, one of the arbiters to be selected by the Commissioner or Buildings and Lands and the other by the lessee; and, in case they cannot agree, they shall call in an umpire; provided, however, that in fixing the rental for the new term, the value of improvements shall not be taken into account as against the said party of the second part, heirs or assigns. And it is further agreed that improvements to the value of —— hundred dollars be made and kept on said premises by the party of the second part.

In witness whereof The said parties have hereunto sett heir hand and seals, the year and day first above written.

—— ——. [L. S.]

For the University of the South.

—— ——, [L. S.]

Rec., 139, 140.

The bill further shows that on August 13, 1906, the lessees so notified as aforesaid, by their attorneys appeared before said Trustee "when the cause of

Mrs. Hoeffer (one of the lessees) was called, heard and determined by said Trustee," and although the attorneys of complainants in this cause presented and interposed as a defense to said proceedings the charter of appellee University, and the holding of the Supreme Court of Tennessee thereon, as hereinbefore set out, insisting that said property was exempt from taxation, said Trustee held and adjudged that the leasehold interest of Mrs. Hoeffer in the lot described in her lease and the buildings thereon were subject to taxation, and assessed the same upon a valuation of $500.

Rec., pp. 11, 12.

The bill further shows that said Trustee continued the case pending against the other lessees named in the bill until September 10, 1906, and announced that under the same facts—existing in the cases of the other lessees—he would assess their property in the same manner; whereupon on September 8 (Rec., p. 1), the bill in this cause was filed.

The bill further charges that the assessment made against Mrs. Hoeffer and that proposed to be made against the other lessees was under the authority of the general assessment act of Tennessee, known as Chapter 258 of the Acts of 1903, Section 1 of which provides:

"That all property, real, personal and mixed, shall be assessed for taxation for State, county and municipal purposes, except such as is declared exempt in the next session."

By the next, that is, the second section of said act, it is provided:

"That the property herein enumerated, and none other, shall be exempt from taxation."

The first, third, fourth, fifth and sixth subsections of Section 2, referred to property owned by the general government, the State, counties and municipalities of the State, and other classes of property not necessary to be here referred to, but subsection 2, set out in the bill, is as follows:

"All property belonging to any religious, charitable, scientific or educational institution, when used exclusively for the purpose for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the State, shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

Rec., p. 13.

The bill further charges that "no provision is made in this act for the protection of property exempted from taxation by charters of incorporation, and educational institutions such as the complainant University, except by the terms of subsection 2

of the second section of the act above set out," which it was averred is much less comprehensive than the provision of Section 10 in complainant's charter.

Rec., p. 13.

The bill further charges that at the time of the granting of the charter to appellee University, and of the execution of the several leases by appellee, hereinbefore referred to, leasehold interests were assessed to the lessor, but that the Legislature of Tennessee had attempted to change this rule and make the lessees liable for taxes by subsection 5 of Section 5 of said act, which is as follows:

"That hereafter all mineral, timber or other interests in fee, for life or for a term of years in real estate of this State, owned separate from the general freehold, shall be assessed to the owner thereof separate from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real estate."

Rec., pp. 13, 14.

The bill further averred that, by Section 32 of said act, set out in the bill (Rec., pp. 13, 14), it was, among other things, provided that the taxes assessed under said act "shall be a lien upon the fee in said property, and not merely upon the interest of the person to whom said property is, or ought to be, assessed, but to any and all other interests in said property, whether in reversion or remainder, or of lienors, or of any nature whatever, and the whole pro-

ceeding for the collection of taxes, from the assessment to sale for delinquency, shall be a proceeding *in rem,*" and thereupon it was charged that the taxes sought to be assessed against the lessees will be a lien upon the fee belonging to appellee University, which is exempt to it under its charter, and the fact that this property so owned by the University was exempt from taxation was taken into consideration in fixing the amount of rent to be paid to the University at the time its several leases were executed. So that, as said leases are renewed, the University will be unable to collect the same amount of rental as it otherwise could, for the reason that the amount of taxes to be paid would necessarily be taken into consideration and be deducted from the amount of rents which the lessees would otherwise be able and willing to pay, that the whole tax will be a direct burden on appellee University, and that the provisions of said act of 1903 under which said taxes are sought to be levied, impairs the contract and nullifies the charter exemption of appellee University, hereinbefore set out, and, therefore, that said act is "in derogation of Section 10, Article I, of the Constitution of the United States, prohibiting any State from passing any law impairing the obligation of a contract."

The bill further charges that the provisions of said act of 1903, providing that taxes assessed against

the lessee shall become a lien on the title of the owner of the property without any notice or process to the owner having been sustained by the Supreme Court of Tennessee, violates the 14th amendment to the Constitution of the United States, in that it provides for the taking of property without due process of law, and because it denies the equal protection of the laws.

Rec., pp. 15, 16.

The bill further averred that under an amendment to its charter "certain municipal privileges" were conferred upon appellee University, but that such privileges were never in fact exercised, and that the phrase "taxes and assessments," used in the form of lease hereinbefore set out, referred to "municipal taxes and assessments at one time contemplated."

Rec., pp. 18, 19, 139.

Thereupon, complainants in the original bill, having averred that the bill was brought in order to avoid a multiplicity of suits and to prevent a "cloud upon the title" of appellee University, and averring that it was without remedy except in a court of equity, prayed, among other things, that appellants, Jetton as Revenue Agent and Osborne as Trustee, be enjoined from further proceeding with the assessment "of the property of the University of the South" and "the leasehold interests . . . . in

and to any part or parcel of the 1,000 acres reserved and exempted domain of the University of the South," and that appellant Osborne as Trustee be enjoined from attempting to collect the taxes assessed against Mrs. Hoeffer on her leasehold interest, as set out in the bill, and that on the final hearing the injunction be made perpetual.

Rec., pp. 16, 19.

A restraining order was issued in accordance with the prayer of the bill (Rec., p. 20), and thereupon the defendants interposed a

DEMURRER,

which challenged the jurisdiction of the court and the sufficiency of the bill upon the following grounds:

(1) That both complainants and defendants are citizens of the State of Tennessee, and no Federal question was presented by the bill; (2) that as to the lessee complainants, citizens of Tennessee, no ground of Federal jurisdiction is presented or claimed; (3) that the court is without power to grant an injunction to restrain the proceedings pending before the Trustee as a special court of the State, having jurisdiction of the matters therein involved; (4) that the suit is, in legal effect, against the State of Tennessee; (5) that the bill is without equity on

its face; (6) that complainants have a complete and adequate remedy at law; (7) that the bill shows that no taxes are sought to be assessed against complainant University, and therefore it has no ground of complaint; (8) that the exemption contained in the charter of the University does not extend to the lessee complainants, and therefore the bill cannot be maintained for them.

Rec., pp. 23, 24.

The second ground of demurrer was sustained and the bill dismissed as to the lessee complainants (Rec., pp. 35-43); but as to the complainant University of the South, the demurrer was overruled and the bill sustained—the court holding that the assessment proceedings before the Trustee under the act of 1903 constituted an impairment of the rights of the University under its charter, and that therefore said *act was in violation of both the State and Federal Constitutions.* A temporary injunction was granted, in accordance with the prayer of the bill.

Rec., pp. 35-42, 43.

Thereupon, defendants in the court below, appellants here, made application for a modification of the order granting a temporary injunction so as to permit an assessment to be made but continuing the injunction against any attempt to collect the taxes, in order that the statute of limitations might not run

in favor of the lessees, and also to require complainant to give bond to cover the amount of the taxes, $14,000, shown by the bill to be involved in this cause; but said application was denied and the injunction allowed to stand as ordered and without bond.

Rec., pp. 44-48, 192.

Answer.

Whereupon, the defendants in the court below, appellants here, filed an answer, the averments of which, material to be stated, are as follows:

First—The charter and organization of the University of the South and its ownership of the land whereon the leases in question were given, are admitted.

Second—That the thriving town of Sewanee, with a population of more than one thousand, had been built upon the 1,000 acres exempt to the University under its charter, and that the buildings and improvements thereon had been erected by lessees of the University under leases identical in form with that set out in Exhibit A to the bill (Rec., pp. 139, 140), by which the lessees agreed to pay "all taxes and assessments upon the premises" leased and to erect thereon certain improvements of a designated value, which buildings and improvements, however,

under and by the terms of said leases, were intended to be, and are, the property of the lessees.

Rec., pp. 26 and 27.

Third—The institution in the Chancery Court of Franklin County in 1887 of the suit by appellee University against the county of Franklin and its subsequent determination, upon appeal, by the Supreme Court of Tennessee in favor of appellee University, was admitted, but the averment of the bill that the Supreme Court of Tennessee held and decreed that the leasehold estates were not subject to taxation was denied and the record and opinion of the Supreme Court exhibited with the bill is referred to as showing that the question of taxing the leasehold estates or the interests of the lessees under their respective leases was not involved or adjudicated in that suit, and that the lessees owning the improvements upon the leased premises were not before the court in that cause.

Rec., pp. 27 and 28.

Fourth—It is admitted and averred that ever after the decision of the Supreme Court in said cause of University of the South v. Skidmore, Trustee, no effort or attempt has been made by any officer of the State of Tennessee or county of Franklin to assess against appellee University any property lying within its reservation of 1,000 acres, and that both the State and county have at all times recognized

that said property as to appellee University is exempt from taxation or any lien or charge on account of taxes of any kind whatsoever to the full extent adjudicated by the Supreme Court of Tennessee, as above set out.

Rec., p. 28.

Fifth—It is admitted that the defendant (appellant here) Jetton is one of the Revenue Agents of the State of Tennessee, clothed with power to institute proceedings for the purpose of having properly assessed property which has escaped assessment, and that the defendant (appellant here) Osborne is the Trustee of Franklin County, and as such, under the act of 1903, constituted a special tribunal or court for the hearing and determination of questions of back or reassessment for taxes. The institution by defendant Jetton of the proceedings before said Trustee and his adjudication in the case against Mrs. Hoeffer, and the continuance of the suits against the other lessees from August 13 to September 10, as averred in the bill, are admitted; and it is also averred that, though Mrs. Hoeffer excepted to the action of the Trustee in assessing the value of her improvements or leasehold interest, she did not appeal to the State Board of Equalization, a tribunal or court, specially clothed with power to hear and determine appeals from a Trustee upon such questions,

as she was entitled to do under the statutes of Tennessee.

Rec., pp. 28, 29.

Sixth—That the proceedings before the Trustee against the lessees was under the authority of the act of 1903, Chapter 258, was admitted, but that said act and the Constitution and laws of Tennessee do not recognize that the 1,000 acres reserved by appellee University, as hereinbefore shown, is exempt from all and every species of taxation as against said University is specifically denied, *and said exemption in favor of said University is expressly admitted, and defendants disclaimed any power to assess, or any intention of assessing, or levying any tax whatsoever, against the property of appellee University,* and denied that the assessment of the interests of the several lessees of appellee University in the buildings and improvements erected by them upon said property would in any manner affect the interest of appellee University; and further denied that the act of 1903 in any manner impairs the obligation of the charter of appellee University, but insisted that the exemption granted by said charter is personal to the University and cannot be extended so as to protect the property interests of its lessees from lawful assessment under said act.

Rec., pp. 29, 30.

Seventh—Further, it is averred that no lien can be claimed upon the property of appellee University, or any interest of said University in said property under and by virtue of Section 32 of the act of 1903, because said property is exempt from taxation under and by virtue of the Constitution and laws of the State of Tennessee, and any attempt to create or enforce a lien on said property would be in violation of the laws of Tennessee, but that no effort to place a lien on said property belonging to said University has been made, or would be attempted, by defendants or other officers of the State of Tennessee and county of Franklin.

Eighth—While admitting that the University may derive a large revenue from the rentals accruing under the leases to its several lessees, nevertheless, defendants denied that a tax against the property interests of the lessees is a tax against the University, and they also denied that the tax sought to be assessed against the interests of the lessees would in any manner affect the amount of rents received by the University, because the lessees expressly agree to pay all assessments and taxes, and for the further reason that the rentals paid by the lessees are fixed in the contracts and cannot be lessened by the payment of taxes or in any manner affected by the value of the improvements, as is expressly provided in said leases, and that the rentals charged by the Uni-

versity are in the nature of a mere ground rental, without regard to the value or character of the improvements.

Ninth—It is further averred that under the leases executed by appellee University, the several lessees became the absolute owners of the improvements erected by them upon the leased premises, and that such improvements were treated and dealt with both by the University and the lessees, as the property of the lessees by effecting insurance thereon for the benefit of the lessees and by other acts of ownership; and that a number of the leases were owned by one lessee—and in several cases, such lessees are non-residents—and the improvements and buildings are rented out to merchants and other residents as an investment.

Rec., p. 32.

Tenth—Defendants denied that the "taxes and assessments" referred to in the several leases—which the lessees covenant to pay—refer only to such municipal taxes as might be levied by the University, and averred that said taxes and assessments so referred to in said leases were intended to cover, and did cover, all taxes which may be levied by authority of law.

Rec., p. 33.

Eleventh—Defendants averred that it was not intended by the proceedings instituted before the Trustee of Franklin County to reach or affect any interest of the University in its exempt property, and denied that the taxes actually assessed against Mrs. Hoeffer upon her interest in her leasehold estate constituted a lien upon the interest or title of the University, and denied that under the proceedings either against Mrs. Hoeffer or the other lessees any judgment could be rendered which would become a cloud or lien upon the title of the University to said property.

Twelfth—Defendants denied that the complainant was without a plain, adequate and complete remedy at law.

Rec., p. 33.

Facts.

The facts developed by the proof are practically without dispute, and, in brief, are as follows:

That within the reservation of 1,000 acres appellee University laid off a town site—some of the lots containing more land than others and being more desirably situated—and thereon has been built the town of Sewanee, having a population of about 1,200 inhabitants. (Rec., p. 157.) That the buildings and improvements in this town have been erected by be-

tween 160 and 170 lessees, under leases running from 10 to 33 years, renewable for two terms and in form identical with that contained in Exhibit A to the original bill in this cause (Rec., pp. 139, 140), and which has been hereinbefore set out; that the rentals paid by the lessees are not based upon the value of the improvements, but are a mere ground rent (Rec., p. 142), ranging, as shown in the schedule exhibited with the deposition of R. M. Dubose, treasurer of the University (Rec., pp. 183-190), from $1 to $37.50 per annum—the greater part of said rentals being below $25 per annum; that many of the leases are owned by lessees who do not live upon the leased premises, but rent the same with the improvements thereon to other persons as an investment, and that when the lessees desire to insure the value of their improvements against fire, the property is treated and described as their own by and with the consent of the treasurer and commissioner of buildings and lands, having full authority over these matters, who is an insurance agent, and has written many of the policies insuring said properties, for the benefit of the lessees.

Rec., pp. 177-182.

It is claimed by the University that many years ago—more than thirty—it sought to establish some sort of a municipal government over the town of Sewanee, and that it was at that time that the gen-

eral form of lease hereinbefore referred to was adopted, and that the "taxes and assessments," referred to in said leases, meant municipal taxes, but it is admitted that said scheme of municipal government was never inaugurated, and that the same form of lease as hereinbefore set out has been in continual use for more than thirty years, and is still used by the University in dealing with its lessees.

Final Decree.

Upon the record thus made, the court affirmed its holding and opinion rendered upon the hearing of the demurrer, and perpetually enjoined appellants "from assessing or attempting to assess and tax the property and leasehold interests as described and complained of in the bill," and decreed "that said property and leasehold interests are not subject to assessment or to the levy and collection of taxes," as attempted and set out in the bill.

Rec., pp. 190, 191.

From the aforesaid decree of the Circuit Court, defendants prayed an appeal, and having duly filed in the court below their assignment of errors, said appeal was granted.

Rec., pp. 193, 198.

Assignment of Errors.

Come now the appellants and say that the decrees of the Circuit Court in overruling their demurrer as to appellee University (Rec., pp. 42, 43), and in granting the relief sought and set out in the final decree (Rec., pp. 191, 192) are erroneous, because:

First—No Federal question is made by the bill—

(a) The act of 1903, Chapter 258, when properly construed, does not impair appellee University's charter exemption, and therefore does not contravene the Federal Constitution;

(b) If said act of 1903 is in contravention of the Constitution of the State of Tennessee, as held by the Circuit Court, it never had the force of a law and was never enacted into a law within the meaning of that provision of the Federal Constitution prohibiting a State from passing a "law impairing obligations of contracts."

Second—The Circuit Court was without power to grant an injunction to stay the proceedings pending before the Trustee of Franklin County—a tribunal or court of the State of Tennessee having sole jurisdiction and power under laws of said State to determine whether property omitted from the assessment rolls is subject to taxation.

Third—The Circuit Court, sitting as a court of equity, has no jurisdiction of the matters involved in the bill.

Fourth—The property of appellee University has not been assessed, nor has it been attempted to assess said property, for taxation, and appellants, representing the State of Tennessee and county of Franklin, expressly disclaimed the right to assess the property of appellee for taxation or place any lien thereon, and expressly admitted that said property is exempt from taxation as against appellee.

Fifth—Appellee University's admitted exemption from taxation is personal to it, and cannot be extended to cover the property interests of its lessees, so as to protect from taxation as against said lessees their leasehold estates and the improvements thereon owned by them.

Sixth—The court erred in holding and decreeing that the property rights in and to the improvements erected by the several lessees of appellee under their respective leases are not subject to assessment for taxation.

Seventh—The court erred in not holding that the State of Tennessee has power under and by virtue of its Constitution and the act of the General Assembly of 1903, Chapter 258, to assess for taxation the

property and interests which the several lessees of appellee University have in and to the leasehold estates and improvements erected by them under their respective leases upon the property owned by and exempt from taxation against appellee.

Eighth—The court erred in perpetually enjoining appellants from assessing or attempting to assess and tax the property rights and leasehold interests in the several lessees of appellee, because, in any event, said injunction should have been restricted to proceedings under Chapter 258 of the Acts of 1903, whereas the decree is so broad that the State and county are virtually enjoined from attempting to make any assessment whatsoever against the leasehold interests of said lessees, under any statute.

Ninth—The court erred in not adjudging that the proceedings instituted by appellant Jetton, Revenue Agent, before Appellant Osborne, sitting as a special court or tribunal for the back-assessment of taxes, were not intended in any way to affect, nor did they in any way affect, appellee, and that no claim is made, either by the State of Tennessee or county of Franklin, that the property of appellee (within the area described in the bill) is subject to taxation.

Tenth—The court erred in not dismissing the bill and denying any relief whatsoever to appellee.

BRIEF AND ARGUMENT.

I.

We submit—

That no Federal question was made by the bill.

The bill showing that all of the parties, complainant and defendant, are citizens of the same State, it was sought to confer jurisdiction upon the Circuit Court solely upon the ground that the lands of appellee University within the reservation described in the bill and which, to a large extent, had been subdivided into lots and leased to various parties for terms varying from ten to thirty-three years, upon which the improvements sought to be taxed have been erected, are exempt from taxation by reason of the provision in the charter of appellee that said lands shall be exempt from taxation so long as they belong to it, and that said lands being so exempt the State is without power to tax the leasehold interests which have been created therein and the improvements which have been erected thereon, under and by virtue of the several leases executed by appellee, as shown in the bill.

To state it differently, it is insisted by appellee that its contract rights, as defined in its charter, may be impaired by reason of possible clouds upon its

title to said lands, resultant from and growing out of the tax proceedings instituted under the statutes of Tennessee against appellee's lessees as the owners of interests in their leases and the improvements made upon the leaseholds.

It is admitted by both the State and county of Franklin that the 1,000 acres of land belonging to appellee and reserved in pursuance of the 10th section of its charter is exempt from all species of taxation against appellee and that it will remain exempt from taxation so long as it is owned by appellee. This was solemnly adjudged by the Supreme Court of Tennessee in the case instituted in 1887 by appellee against Skidmore, then Trustee of Franklin County, and reported in 87 Tenn., 155 et seq., wherein appellee's charter was construed and its rights thereunder adjudged in accordance with the Constitution of the State of Tennessee (Art. I, Section 20), which provides that—

"No law impairing the obligations of contracts shall be made."

It will be borne in mind that the record in the Skidmore case, including the final decree and opinion of the Supreme Court of the State of Tennessee—the final arbiter in respect of the construction and

application of the Constitution and statutes of Tennessee—are exhibited with the bill and by apt averments made a part of appellee's case.

It is to be noted that no attempt was made to assess the property of appellee—nor was any claim set up that the interest of appellee in and to said property is subject to taxation, and it is here proper to call the attention of the court to the solemn admission of appellants, representing the State and county of Franklin, as to the continuing binding force of the adjudication of the Supreme Court of Tennessee that said property is exempt from taxation against appellee, and to the express disclaimer of any intention to assess appellee's property.

But, notwithstanding this, appellee contends that its charter is impaired by the provisions of the Tennessee assessment act of 1903, Chapter 258.

In reply, we submit:

That the Assessment Act of 1903, when properly construed, does not in any way affect appellee's property or place any lien or cloud thereon.

In order to determine this question, it is necessary to set before your Honors those provisions of the Constitution of the State and the act of 1903 applicable thereto.

The Constitution of Tennessee (Art. II, Section 28), among other things, provides that—

"All property, real, personal, and mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall exempt $1,000 worth of personal property in the hands of each taxpayer and the direct product of the soil in the hands of the producer and his immediate vendee. All property shall be taxed at its value, to be ascertained in such manner as the Legislature shall direct, so that taxes shall be equal and uniform throughout the State."

The assessment act of 1903, among other things, provides:

"SEC. 1. That all property, real, personal and mixed, shall be assessed for taxation for State, county and municipal purposes, except such as is declared exempt in the next section.

"SEC. 2. That the property herein enumerated, and none other, shall be exempt from taxation:

"

. . . . . .

"(2) All property belonging to any religious, charitable, scientific or educational institution, when used exclusively for the purposes for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the State, shall be taxed on its whole or partial value, as the same may be used in competition with secular business."

The remaining subsections of Section 2 are not applicable to the questions involved in this case.

Section 5, subsection 1, provides that all property subject to taxation shall be taxed to the persons owning or claiming to own the same on the 10th day of January of each year.

Subsection 5 of Section 5, under which the bill (Rec., p. 14) charges that the assessments sought to be made against the lessees in the proceedings before appellant Osborne, Trustee of Franklin County, is as follows:

> "That hereafter all mineral, timber or other interests in fee, for life or for a term of years, in real estate in this State, owned separate from the general freehold, shall be assessed to the owner thereof separate from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real estate."

By Section 32 of said act, as shown in the bill (Rec., pp. 13, 14), it was, among other things, provided that all taxes under said act "shall be a lien upon the fee in said property and not merely upon the interest of the person to whom said property is or ought to be assessed . . . and the whole proceedings for the collection of taxes, from the assessment to sale for delinquency, shall be a proceeding *in rem*," etc.

So, as charged in the bill, provision is made for the assessment, separate from the general freehold, of interests in real estate for life or for a term of years, and it is insisted that because, by Section 32 of said act, it is provided that taxes upon real estate "shall be a lien upon the fee" in the property assessed, although the fee in the property owned by appellee University is unquestionably exempt from taxation, a cloud may be placed upon appellee's title by the assessment proceedings sought to be enjoined in this cause.

We submit that such result could as readily be claimed and insisted upon because of the provision of the Constitution of Tennessee that all property shall be taxed, which is given legislative expression in the first section of said assessment act, as shown above.

We submit, further, that although the interests of the lessees in and to their leasehold estates and the improvements thereon are taxable as real estate, as above provided for (subsection 5 of Section 5), nevertheless, it is manifest from the entire act that it was not intended by Section 32 to declare a lien upon a fee, either in possession or in remainder, which is exempt under the laws of Tennessee; otherwise no effect could be given to the exemptions unquestionably provided and declared by Section 2 of

said act. In other words, the provision contained in Section 32, that all taxes on real estate shall be a lien upon the fee in said property, must be construed to mean that such taxes shall be a lien upon the fee in property which is not exempt. This construction harmonizes and gives effect to all parts of said act, and sustains the same as a valid enactment.

It is a familiar canon of construction applicable to statutes that the words thereof will be either enlarged or restricted in meaning so as to carry out the manifest intention of the Legislature, and that the intention of the Legislature being ascertained with reasonable certainty, words may be supplied in the statute so as to give it effect and avoid any repugnancy or any inconsistency with such intention.

Lewis' Sutherland Stat. Const., Secs. 381, 382.

Further, as said in Gold v. Fite, 2 Baxt. (Tenn.), 248, 249: "A thing within the intention of the makers of a statute is as much within the statute as if it were within the letter."

The construction given above to the provisions of Section 32 of the assessment act of 1903 places it in harmony with the Constitution of the State and of the United States, and it is a familiar canon of construction of statutes that they must be so construed,

when it can be done without violence to the evident intent of the Legislature, so as to avoid any conflict with the Constitution of the State or of the United States; and that every intendment, when the statute has been formally enacted, must be made in favor of its validity, and that where it is subject to two constructions that must be given it which will sustain rather than that which will defeat it.

Standard Oil Co. v. State, 117 Tenn., 618, 640, 641.

Further, in ascertaining the intention of the Legislature, it will not be presumed that the lawmakers intended to pass an act in conflict with the organic law.

Maxey v. Powers, 117 Tenn., 403;
Wise & Co. v. Morgan, 101 Tenn., 282;
Rose v. Wortham, 95 Tenn., 508.

Further, it is to be borne in mind that statutes passed with due form and ceremony, as was the act of 1903, when tried for the constitutionality, as said act is, are entitled to the benefit of every reasonable doubt.

Cole Mfg. Co. v. Falls, 90 Tenn., 466;
Railroad v. Harris, 90 Tenn., 688;
Henley v. State, 98 Tenn., 666.

Further, the Constitution of Tennessee is a law of the State within the meaning of the Federal Consti-

tution (Bier v. McGehee, 148 U. S., 137), invoked by appellee, and we ask what part of the act of 1903 shows that it was the intention of the Legislature to disregard that mandate of the State Constitution forbidding it to make a law impairing the obligations of appellee's contract? No such intention can be presumed, and we insist there is no provision of the act from which it can be reasonably inferred that the lawmakers intended to violate the provisions of the State Constitution, which must be read into every act, or disregard the plain mandate of the Federal Constitution.

The decision of the Supreme Court of Tennessee that appellee's property is exempt from taxation has the force of a law of the State, and will be treated as a part of the statute affecting said property.

It is insisted by appellee that because its charter exemption and rights thereunder were not expressly named in subsection 2 of Section 2 of the act of 1903, enumerating numerous exemptions from taxation, the Legislature intended that appellee's property should be taxed under the provisions of said act.

It is true that appellee's charter exemption is not expressly enumerated along with other property exempt from taxation. It will be conceded—if not, it can be shown by probably an hundred published acts of the General Assembly of Tennessee granting,

under the Constitution of 1834, exemptions to railroads, turnpike companies, educational institutions and even banks, and by every assessment act passed since the Constitution of 1870—that it has never been deemed necessary to enumerate by name among the classes of property declared exempt by said assessment acts, the many exemptions which had been validly created by legislative acts under the Constitution of 1834—nor was it necessary to so enumerate them, because every assessment act, in its application to any particular property, must be construed *in pari materia* with other legislative acts affecting the same property and under the rules of interpretation above referred to, that construction in every doubtful case must be given which will sustain the act and harmonize it with the Constitution.

Further, we submit that the decision of the Supreme Court of Tennessee that the property of appellant is exempt from taxation under the Constitution of the State must be read into and considered as a part of the provisions of Section 32 in the same manner as though it were expressly provided that the provisions of said Section 32 should not apply to this property, because, under the act of 1858, conferring said exemption, as construed by the fundamental law of the State, said property must be treated as, and is, exempt. This adjudication of the Supreme Court of Tennessee that appellee's prop-

erty is exempt from taxation must be construed as a "rule of property" governing and controlling its relations to the State and her various agencies.

Therefore, considering the act of 1858, creating the exemption, and the solemn declarations of the Supreme Court of the State of Tennessee, construing it, as a part of any statute of the State of Tennessee in relation to appellee's property, will this court say that appellee's contract either is impaired or may be impaired by these laws of Tennessee which, under her Constitution, declare that the property in question is not subject to taxation to appellee so long as it is owned by it?

Further, in this connection, it is proper to submit to your Honors that it is not sufficient to give this court jurisdiction upon the grounds claimed, that by possibility there may be some cloud cast upon appellee's title by some possible action of the officers of the State, because the presumption in all cases is that the courts of the State and the officers thereof will do what the Constitution and laws of the United States require.

Shreveport v. Cole, 120 U. S., 36;
Neal v. Delaware, 103 U. S., 370.

But,

The property of appellee is expressly exempt from taxation by the provisions of Section 2, subsection 2, of the act of 1903; and it is immaterial whether immunity from taxation be accorded appellee under its charter or the exemptions enumerated in said act.

The exemption is contained in the following provision:

"All property belonging to any religious, charitable, scientific or educational institution, when used exclusively for the purpose for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the State, shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

Now, it was averred in the bill, and is admitted, that the rentals derived by appellee — that is, the ground rents accruing from the several leases referred to in the bill—are used exclusively by appellee for the purposes for which it was created; so that the property of appellee comes within the express provisions of the exemption provided by said Section 2, subsection 2.

But it is charged in the bill (Rec., p. 14) that the last sentence of said subsection 2, referring to property used "in secular business and competing with a like business that pays taxes," excludes appellee from the benefit of said exemption.

This precise question was before the Supreme Court of Tennessee at its December term, 1905, in the case of *Vanderbilt University v. Cheney, Comptroller of the city of Nashville,* 116 *Tenn.,* 259, wherein it was held, construing an identical provision contained in the assessment act of 1899, Chapter 435, Section 2, subsection 2, that Vanderbilt University, by renting certain property owned by it to various parties for residential purposes and devoting the income therefrom to the purposes and needs for which it was created, did not thereby become subject to assessment for taxes on said property, for the reason that such use of said property did not amount to a use thereof "in secular business" within the meaning of said statute, providing that property belonging to educational institutions and used "in secular business and competing with a like business that pays taxes" to the State, shall be taxed.

It will be noted that Vanderbilt University was an educational institution, incorporated under the general laws of the State and had no charter containing an express exemption from taxation, but the Supreme Court held that, under the authority conferred upon it by the Constitution, the Legislature had lawfully exempted its property from taxation by providing, in substance, that all property belonging to an educational institution, when used exclusively for the purposes for which said institution was created, shall be exempt from taxation.

In this case the Supreme Court of Tennessee referred to and approved its holding in the case of the University of the South v. Skidmore in the following terms:

"In University of the South v. Skidmore, 87 Tenn., 158, it was held that a charter exemption of realty under the Constitution of 1834 'from taxation so long as said lands belonged to' an incorporated institution of learning, remains in force so long as title remains in the corporation. It does not depend upon the use made of the property. It was, therefore, held that the University did not so far renounce title as to defeat the exemption by giving leases thereof for terms of years with renewal options to divers persons who built up a village thereon, the annual rent being reserved and devoted exclusively to the purposes of the University."

So we have an express adjudication of the Supreme Court of Tennessee, not only as to the effect of the provisions of Section 2, subsection 2, but approving, more than two years after the passage of the act of 1903, its holding in the Skidmore case.

Therefore, it being manifest that appellee's property, in so far as it is concerned, is expressly covered within the exemptions enumerated by Section 2 of the act of 1903, it can not be contended that the provisions of Section 32 have any application whatsoever to it. The provisions of this section fixing the lien of taxes upon the whole estate and all interests therein, and not merely upon the interest of the party to

whom the property might be or should be assessed, first found legislative expression in Tennessee in the assessment act of 1897, from which they are taken *verbatim;* and it is well known—it will certainly be conceded at the bar by adversary counsel—that such provisions were intended to change or remedy the holding of the Supreme Court of Tennessee (Nashville v. Cowan, 10 Lea, 209; Coldwell v. Crumley, 35 S. W. Rep., 765; Anderson v. Post, 38 S. W. Rep., 283; State v. Campbell, 41 S. W. Rep., 937; Ferguson v. Quinn, 96 Tenn., 36) that the lien of taxes assessed against a life tenant as "the owner," in the meaning of the tax laws, rested only upon the interest of the life tenant and not upon the remainder interest in the property, and that the lien of taxes was not superior to the vendor's lien or the lien of a mortgage.

Dunn v. Dunn, 99 Tenn., 606, 607.

Such was the purpose of the Legislature—it was never intended by these provisions to render taxable property which was exempt, or to place, by indirection, a lien upon property which the statute expressly recognized as exempt from taxation.

But there is a failure of jurisdiction for another reason, based upon the holding of the lower court:

The Circuit Court held that the Act of 1903, so far as it affects appellee, is in violation of the Constitution of the State of Tennessee; therefore, does it not necessarily follow that

the State has not enacted or "passed" this act into a law, within the meaning of the provision of the Federal Constitution forbidding states to pass laws impairing the obligations of contracts? (Rec., p. 42.)

We cannot assent to the interpretation placed by the lower court upon the act of 1903, but respectfully insist that said act, when properly construed, does not in any way affect the property of appellee. However, the lower court held that the necessary effect of said act is to impair appellee's charter exemption, and if this be true, we concede that the act is void, as held by the court, because expressly forbidden by the Constitution of the State; but is not the necessary effect of such holding to eliminate the supposed Federal question from this case? Does it not inevitably follow that the State has not *enacted into a law* the matter complained of by appellee, within the meaning of the Federal Constitution forbidding States *to pass laws* impairing the obligations of contracts? We submit that something more than passing a bill with due form and ceremony is necessary to enact it into a law. If the matter of a bill, though so passed, is in contravention of the Constitution of the State, that is, if the Constitution of a State forbids the Legislature to do the thing sought by the bill, compliance with form and ceremony as to the passage does not enact — "pass" — it into a law of the State. Such a bill, even after compliance with the forms and manner of passage, has no sanc-

tion or recognition by the State—it is not a law of the State.

We have been unable to find that this precise question has been passed upon by this court, but we believe the principle is sound and has been recognized in analogous cases. We refer:

(1) To that class of cases too well known and recognized to make it necessary to cite them here, wherein State officials, acting under a supposed law of a State, have invoked the protection of the 11th amendment to the Federal Constitution and claimed immunity from suit because acting for and by the authority of a State, but wherever it has been found that the alleged law under claim of which such officials were acting was in contravention of the Constitution of the State, it has been adjudged that the acts of such officials were not done by authority of the State, or any law of the State.

(2) In the American system, municipal corporations—governmental agencies—derive their powers from the people of a State acting through their Legislature; and authority to exercise any particular power by a municipality must be found within the legislative enactment creating or conferring powers upon such municipality. And it is well settled that when an ordinance or by-law is adopted by a municipality, under and within the power and authority

conferred upon it by the Legislature, such ordinance or by-law is a law of the State within the meaning of the Federal Constitution forbidding States to pass laws impairing the obligations of contracts, or make or enforce laws abridging the privileges or immunities of citizens of the United States.

But wherever the jurisdiction of a Federal court has been invoked upon the ground that an ordinance of a municipality impairs the obligations of a contract, it has been, so far as we are advised, uniformly held that if such ordinance has not been authorized by the people of the State acting through their Legislature, it is not a law of the State, and therefore a Federal court is without jurisdiction to hear and determine the questions made upon it.

Gas Co. v. Hamilton, 146 U. S., 258.

Is there any difference in principle between an ordinance not authorized by the people of a State through their Legislature and an act of a Legislature which the people of a State by their Constitution forbid the Legislature to enact into a law?

But the learned judge who presided in the lower court, while holding that the act of 1903 had not been enacted by the State of Tennessee in compliance with her own Constitution, and was therefore void, nevertheless maintained jurisdiction upon the ground, as it appears in his opinion (Rec., pp. 40, 42), that

the officials of the county of Franklin and State of Tennessee were, by prosecuting the suits against appellee's lessees before the Trustee and the Trustee by entertaining jurisdiction of said suits, impairing appellee's charter exemption, and rested his holding in this respect upon the cases of C. B. & Q. Ry. Co. v. Chicago, 166 U. S., 226, and Ohio v. Thomas, 173 U. S., 276.

We respectfully insist that the learned judge erred in the view taken by him of the action of these officials, because they could not—as we construe the act of 1903—place a lien upon the property of appellee, and moreover, said officials (Rec., pp. 28-31) expressly admit appellee's exemption from taxation, as determined by the Supreme Court in the Skidmore case, *supra,* and deny that it is their intention or purpose to in any way assess appellee's property or place any lien thereon or attempt to sell the same for the taxes sought to be assessed against the lessees.

Further, we respectfully insist that the cases cited by the learned trial judge, *supra,* are clearly distinguishable from the case at bar and do not sustain his holding, because:

(1) The case of C. B. & Q. Ry. Co. v. Chicago, *supra,* was brought to this court upon writ of error to the judgment of the Supreme Court of Illinois—the court of final resort of that State—which had, in

effect, sustained the statute of that State or judicial proceedings complained of as a valid and constitutional law of Illinois; whereas, the court below expressly held that the act of 1903 was in conflict with the Constitution of the State, that is, the State had not passed it into a valid enactment;

(2) In Ohio v. Thomas, 173 U. S., 276, an entirely different question from that presented in the case at bar was before your Honors, and as we understand it, your Honors only held in that case that a Federal officer, such as the governor of a soldiers' home, created and supported under Federal laws, in discharging his duties in a State and engaged in superintending the internal government and management of a Federal institution under the lawful direction of its board of managers and with the approval of Congress, is not subject to the jurisdiction of a State in regard to those very matters of administration which are approved, as stated, by Federal authority.

For these reasons, we respectfully submit that when the lower court found the act in question to be forbidden by the Constitution of the State, the Federal question upon which jurisdiction was sought to be predicated was eliminated, and the bill should have been dismissed.

II.

A Federal court is without power to enjoin the proceedings pending before the Trustee of Franklin County, a special court or tribunal of the State having sole jurisdiction and power in the first instance under the laws of said State to determine questions involved in the assessment and valuation for taxation of property omitted from the assessment rolls.

Under the provisions of the act of 1903 (printed in the appendix to this brief), the Trustee of each county in the State is vested with judicial powers and sits as a court of first instance in the matter of the assessment for taxation of property omitted from the assessment rolls, and from his holding in any particular case an appeal lies either by the State or county seeking an assessment, or by the party whose property is affected thereby, to the State Board of Equalization. Both of these tribunals or courts have been held to be quasi courts of record of the State of Tennessee.

By Section 720 of the Revised Statutes of the United States it is provided:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The proceedings sought to be enjoined are in no sense summary, or without notice, but are, to all intents and purposes and in legal effect, *suits* on behalf

of the State of Tennessee and county of Franklin, through the State's duly authorized Revenue Agent, before a special tribunal or court clothed with judicial functions, against persons who were cited, after due notice to appear before said court, from the judgment of which if dissatisfied therewith, they were entitled to an appeal to the State Board of Equalization, an appellate court having jurisdiction to determine questions involved.

It is to be observed that the lessees against whom the proceedings were instituted, after due notice had been served upon them as required by the statute, appeared by their counsel, and in the case of Mrs. Hoeffer final judgment was rendered.

Rec. pp. 11-12.

We have here all that is essential to constitute a court —parties plaintiff and defendant, a matter in controversy, and a tribunal clothed with judicial functions and power to determine the questions involved.

As stated by Chief Justice Turney, in Tomlinson's Case, 88 Tenn., 17-21, these special tribunals are clothed with power to try matters of law and fact—they are inferior courts authorized by Article 6, Section 1, of the Constitution of the State.

It is true that the opinion of Judge Turney in the Tomlinson case was delivered in dissent from the result

reached by a majority of the court, which, however, did not differ from his holding in respect of the character of these special tribunals, but merely went to the extent of holding that certiorari in lieu of an appeal did not lie, under the statutes then in force, to review the holding of a county board of equalization, where no appeal was expressly given.

It is proper, however, here to note that this holding upon the question of certiorari has since been reviewed by the Supreme Court of Tennessee, and virtually overruled. And it is now held that circuit courts have general power and revisory jurisdiction over all inferior tribunals created by the Legislature and vested with judicial powers which it may exercise by certiorari and supersedeas, where no appeal or writ of error will lie for the correction of their judgments.

Further, the opinion of Judge Turney in respect of the character of these special courts has been practically adopted by the Supreme Court in adjudicating questions arising upon the act of 1903.

Briscoe v. McMillan, 117 Tenn., 115, 131, 132;
State v. Taylor (Tenn.), 104 S. W. Rep., 246.

There is no difference between the powers and functions of the Trustee and those of the State Board of Equalization, save that the Trustee acts in the first instance and the State Board of Equalization only by appeal from him. Therefore, in respect of the char-

acter of such tribunals or courts, we call the attention of your Honors to the language of the Supreme Court of Tennessee in Briscoe v. McMillin, *supra:*

"We fully agree with the contention made on behalf of the State that by the provisions of this act (Acts of 1903, Chapter 258), the said Board (referring to the State Board of Equalization) is constituted a quasi court of record, and that its findings, in the exercise of the jurisdiction conferred upon it, have the force and effect of judicial determinations, and cannot be collaterally attacked."

In State v. Taylor, *supra*, virtually the same holding was made in respect of the functions and powers of the Trustee.

Further, as we understand the decisions, it has been uniformly held by this court that wherever proceedings are sought to be enforced before a tribunal exercising the judicial power of the State, they are to be considered as proceedings of a court of the State which cannot be restrained by an injunction issuing out of a Circuit Court of the United States, because, to issue such an injunction would be in direct contravention of the peremptory enactment of Congress that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any

court of a State, except where authorized by the bankruptcy act.

Diggs v. Wolcott, 4 Cranch, 179;
Peck v. Jenness, 7 How., 612-625;
Watson v. Jones, 13 Wall., 679-719;
Haynes v. Carpenter, 91 U. S., 254-257;
Dail v. Reynolds, 96 U. S., 340;
Sargent v. Hilton. 115 U. S., 348.

In Haynes v. Carpenter, *supra*, this court, speaking through Mr. Justice Bradley, said:

"In the first place, the great object of the suit is to enjoin and stop the litigation in the State courts and to bring all the litigated questions before the Circuit Courts. This is one of the things which the Federal courts are expressly prohibited from doing; by the act of March 2, 1793, it was declared that a writ of injunction shall not be issued to stay proceedings in a State court. This prohibition is repeated in Section 720 of the Revised Statutes, and extends to all cases, except where otherwise provided by the bankruptcy law."

III.

The property rights of the several lessees of appellee in and to their respective leasehold estates and the improvements erected thereon under their several leases are lawfully subject to taxation by the State and county of Franklin.

We have seen that it is the policy of the State of Tennessee, as expressed both in her Constitution and statutes, to tax all property within her borders except such as she has expressly exempted from taxation;

that such exemption is recognized by the State of Tennessee and county of Franklin, and that any intention to assess said property or place any lien or cloud upon the title of appellee to said property has been expressly disclaimed, and that no proceedings has been instituted by which it has been sought in any way to tax any interest of appellee in its exempt property.

Further, it is to be observed that appellee in its bill (Rec., pp. 13-14) admits that provision has been made for assessing as realty such leasehold interests as are owned by the lessees of appellee separate from the fee in such property.

It is immaterial whether the interests of said lessees in the property in question would be real estate or personalty at common law, because the Legislature has unquestioned power for purposes of taxation to classify property without regard to the common law distinctions—that is, it may provide that real estate shall be assessed as personalty or that personalty shall be taxed as realty.

Cooley on Taxation (3 ed.), p. 641.

If this question were made, we would only need to refer to the Code of Tennessee (Shannon), section 63, wherein among other things, it is provided that, "'Real estate,' 'real property,' 'lands,' include lands, tenements and hereditaments, and all rights thereto and interest therein, equitable as well as legal."

The effect of this provision was to change the common law rule that a leasehold estate is personal property.

Alley & Bush v. Lanier, 1 Cold., 540;
Burr v. Graves, 4 Lea, 556.

The word "owner of land," as used in the statutes of Tennessee, does not necessarily mean the person owning the entire estate in such property, but may mean any person having an interest therein, whether in fee or for a term of years, as has been adjudicated by the Supreme Court of Tennessee in Alley & Bush v. Lanier, *supra*, wherein it was held, under a statute giving a mechanic a lien upon land wherever a house has been built or repaired by contract with the *owner*, that the word "owner" means a person owning a *term* as well as a *fee*, and sustained a lien in favor of a mechanic upon the leasehold estate and improvements thereon owned by a tenant for years.

Judge Cooley, in his work on Taxation (3rd edition), pp. 633-634, says: "Where land is owned by one person and buildings thereon by another, the two are assessed separately, and the assessment of the buildings as real estate is proper. It is also proper to thus assess the buildings *when the land is exempt from taxation;*" citing People v. Brooklyn Assessors, 93 N. Y., 308; Russell v. New Haven, 51 Conn., 259; Brainard v. Colchester, 31 Conn., 407; Lord v. Litchfield, 36 Conn., 116; People v. Tax Commissioners, 80 N.

Y., 573; Union Compress Co. v. State, 64 Ark., 136; Milligan v. Drury, 130 Mass., 426.

Now, let us apply the principle of these cases to the *property and interest of the lessees*, as shown in this record, because it is the interests of said lessees and not any interest of appellee that is sought to be taxed. The leases provide that said lessees shall have their separate parcels of land for periods ranging from three to thirty-three years, upon payment of a mere ground rent and a covenant said that lessees shall pay "*all taxes and assessments upon said premises.*" It is further provided that at the expiration of the terms created by each of such leases appellee can only take over the premises and improvements thereon by paying for all of the improvements made thereon or by renewing the leases for another term on such terms as may be agreed upon by the parties respectively.

Under these provisions, to whom do the improvements belong? Unquestionably to the lessee; because appellee cannot become the owner of said improvements except upon payment of the value thereof. The plain implication from this is that unless said improvements are paid for by appellee, the lessee thereof might lawfully remove them. True, it is not so expressly stipulated, but nothing less than this right could have been meant by the plain provisions of the lease.

Rec. pp. 139-140.

It is true the leases do not expressly stipulate that in case a renewal is made upon the expiration of the term, the appellee must pay for the improvements at the expiration of such renewal term, but it is provided that the lease may be renewed "on such terms as may be agreed upon by the parties respectively," and while that contingency has not yet arisen, can it be supposed and can this lawsuit be predicated upon the assumption that the lessees would agree to a renewal upon terms any less advantageous than those providing for payment at the expiration of the first term? If there is any presumption whatsoever about this matter, it is that the parties would act or do that thing which would be for their interests.

Further, it is to be borne in mind that, by the express terms of the leases, the value of the improvements cannot be taken into account as against the lessee in fixing the rental for any renewal term.

Rec. pp. 139-140.

In Russell v. City of New Haven, 51 Conn., 259., it was held that a lessee erecting improvements on lands leased from Trinity Church—which lands were exempt—was liable for taxes on such improvements. The lease contained a provision that at the end of the term the lessor should pay for the improvements a

sum to be fixed by appraisers. This case is directly in point. To the same effect are the holdings in

Philadelphia, etc., R. R. v. Appeal Tax Court, 50 Md., 397;

Zumstein v. Consolidated Coal Co., 50 Ohio, 264;

Bently v. Barton, 4 Ohio St., 410.

In Parker v. Redfield, 10 Conn., 490, it was held that the interest of a lessee in improvements erected by him on property leased from Trinity Church was taxable, and that such improvements were clearly distinguishable from the lands themselves, which were exempt. The terms of the lease involved in this case were substantially the same as are provided in appellee's leases, and it was held that the improvements, if not paid for at the termination of the lease, might be removed by the lessee, although there was no express provision to that effect.

In People v. Board of Assessors, 93 N. Y., 308-311, was involved the taxability of certain leaseholds or improvements thereon leased from the Brooklyn Benevolent Society. The facts were, in brief, as follows: The Brooklyn Benevolent Society leased certain of its lands which were exempt from taxation to it to certain persons with covenants of renewal, reserving the privilege at the expiration of any term to assume possession by paying the lessees the appraised value of the buildings erected by them upon the premises. As stated,

the real estate of said society was, under its charter, exempt from taxation, and it was insisted on behalf of the lessees that the benefit of such exemption extended to the estate and interest owned by them in said property, but the Court of Appeals of New York, approving Van Ness v. Commissioners, 80 N. Y., 573, held that the interests of said lessees in said property was subject to taxation, and in so holding it is interesting to note that the court, among other things, said:

"We have, therefore, arrived at the conclusion that the interest of the relators (lessees) in the property assessed does not come within the letter of the statute exempting the property of the Brooklyn Benevolent Society from taxation. We think they are very far from coming within the spirit and meaning, and if necessary should feel constrained to give a rigorous construction to the act to prevent its escape from those burdens of taxation which become less onerous according to the equality with which they are distributed over the community at large."

Further, upon the construction and effect to be given to the leases in this case, we also refer your Honors to the following part of the opinion of the New York Court of Appeals in said case of People v. Board of Assessors, *supra*:

"We conceive also that the insertion in a lease of a clause giving a tenant the right to remove erections made by him at the expiration of his term presents no legal distinction between such a contract and one where the lessor, by the terms of the lease, can acquire ownership of such erections only by paying

therefor. In such case, the right of removal is implied by law upon noncompliance by the lessor with the conditions of the lease. In one case the right is expressly secured and in the other it follows as a necessary implication from the conditions of the contract."

But it was insisted in the court below that the case of People v. Board of Assessors, *supra*, had been, in effect, overruled by the decision of the New York Court of Appeals in the case of People ex rel. v. Barker, 153 N. Y., 100. An examination of the opinion in that case shows that a very different case was presented from that disclosed in People v. Board of Assessors, and that the lease under which the improvements were erected provided in express terms that said "*improvements should become the property of the party of the first part* (that is, of the city of New York) *on the expiration* or sooner determination *of this lease* or any renewal thereof, *free from all claims, charges and incumbrances of every kind whatsoever*," etc.; so, it is manifest that the improvements erected by the lessees involved in People v. Barker became, when attached to the freehold, at once the property of the lessor, and that the lessees had no sort of separate interest therein.

In Exparte Gaines, 96 Ark., 227, the Supreme Court of Arkansas held that the improvements erected by certain lessees upon property belonging to the United States, was nevertheless taxable to the lessees separate from the freehold.

In San Francisco v. McGinn, 67 Cal., 110, it was held as follows:

"The city and county of San Francisco in 1875, under the act of March 30, 1875, leased to defendant a portion of the school lot belonging to the city and county, located at the corner of Market and Fifth streets. Defendant took possession of the leased land and made improvements thereon and erected a substantial four-story frame building with brick foundation attached to the soil. For the fiscal year 1881–1882 the building and improvements were assessed to defendant, and this suit is to recover the taxes. Defendant insists that he is not liable for the taxes, because he says (1) the city and county own the realty—the improvements and buildings are portions of the realty, and therefore not his property; and (2) Section 3887 of the Political Code, as in force at the date of the lease, 'declared that the lessor of real estate is liable for the taxes thereon,' and that the city and county, being liable, cannot recover of him. . . . . Section 3607 of the Political Code, as in force in 1875, declared the property of municipal corporations was not subject to taxation. *If, as contended, the building and improvements were portions of the realty and thus exempt, the provision of the Constitution of* 1863, *as to uniformity of taxation, might be evaded.*

"We are of the opinion that, for the purposes of revenue, the defendant was the owner of the property assessed, and that he is liable for the taxes."

The case of State v. Campbell, 23 La. Ann., 445, was relied upon by appellee in the court below, but that case is clearly distinguishable from the case at bar, because the decision therein was rested upon a statute altogether different from the one involved

here; moreover, the Supreme Court of Louisiana, in a later case—Lee v. New Orleans, 28 La. Ann., 426—has held that the interest and property rights of lessees in exempt property are subject to taxation.

It is well settled that the public domain of the Federal government is not subject to taxation, but the improvements on such domain, whether owned by the preemptioner or one occupying public lands without license, are liable to assessment for taxation, if made so by the revenue laws of a State.

People v. Shearer, 30 Cal., 645, 656, 657.

In State v. Moore, 12 Cal., 56, 69-70, it was held that a mining claim upon the property of the United States, exempt from taxation under an act admitting California into the Union, is property and subject to taxation by the State.

In State v. Tucker, 38 Nebraska 56, 59-60, it was held that improvements placed by individuals upon the public domain—even when the land may revert to the Federal government—are subject to taxation, and that there is a marked distinction between the power to tax improvements and the power to tax the land itself.

However, we do not need to cite the decisions of States other than Tennessee for authority to tax the property interests and improvements made by the lessees upon property admitted to be exempt as to appellee.

In the case of *Luttrell v. Knox County, 89 Tenn., 257*, it was expressly decided by the Supreme Court of Tennessee that the superstructure erected by a lessee on certain bridge piers owned by the county of Knox and therefore exempt from taxation, were during the continuance of the lease subject to taxation under the laws of the State of Tennessee as the property of the lessee or his assignee.

Whether the property in the Luttrell case was assessed as personalty or realty does not appear from the opinion of the court, nor is that material to the questions involved here as we understand them; but here we are reminded that in the lower court it was insisted by the learned counsel for appellee that there is a distinction between improvements on government property and those upon lands exempt by contract or statute. We confess that we are utterly unable to perceive any such distinction, or that, upon principle, there should be any such distinction. It is immaterial whether the property cannot be taxed because it belongs to the goverment or whether the owner is an individual or corporation, and it has been declared exempt by a valid statute—the effect is the same—it is exempt from taxation.

Further, on the trial of this cause in the lower court, it was insisted on behalf of appellee that it was determined in the case of East Tennessee, etc., Railway Co. v. Morristown, 35 S. W. Rep., 771, decided in

1895 by the Court of Chancery Appeals (an inferior tribunal), and which was affirmed by the Supreme Court in an oral opinion, but upon what grounds it does not appear, that in the absence of a contract in respect of taxes a leasehold estate should be assessed to the lessor as the owner of the property, citing Turley v. Memphis, 8 Heisk., 845, decided in 1872, as authority for that proposition. However, without regard to the ground upon which the opinion of the Court of Chancery Appeals may have been affirmed, it does not aid appellee's contention, for the reason (1) that the leases involved in this case provide for payment of taxes by the lessees, and (2) because the assessment act of 1889, referred to by the learned judge of the Court of Chancery Appeals in his opinion, does not contain the several provisions of the act of 1903, under which the bill insists that the interests of the lessees are sought to be taxed in this case.

Further, the Court of Chancery Appeals, in its opinion just referred to, expressly held that the right of removal as to buildings and structures that might be erected upon the leased property secured to the lessee in the instrument of lease, prevented such buildings and structures from becoming technically improvements upon the real estate, and that the value of the same was assessable to the lessee as personalty.

This holding, as above stated, was under the act of 1889, which did not contain the provisions of subsec-

tion 5 of section 5 of the act of 1903, but it is immaterial to appellants whether the property rights of appellee's lessees be assessed as personalty or realty, and that question is not before this court—the question here being whether or not the State has the power to levy taxes upon the property rights of the lessees, without regard to whether such property rights be considered as realty or personalty.

Further, the opinion of the Court of Chancery Appeals seems to be predicated upon the holding of the Supreme Court in Turley v. Memphis, *supra*, which was also under an entirely different statute, but it is not improper in this connection to call the attention of your Honors that while it is stated in the opinion of the court that "nothing was said in the lease about the payment of taxes," and that therefore the owners were to pay the taxes, yet the opinion also shows that the amount of the tax was evidently added into the rentals paid by the lessees, so that the taxes were, in effect, paid by the lessees, under an agreement and understanding that if the leased property, which was to be used for educational purposes, should be held exempt, they should have an abatement of the rent to the amount of taxes that would be levied in case the property were not exempt.

It was further insisted in the court below that the case of *Murray v. Charleston*, 96 *U. S.*, 440, was authority for the contention of appellee. All that was

held in that case, as we understand it, was that the city of Charleston was bound by its contract in relation to the interest which it agreed to pay on its bonds and that it could not tax or impair that interest belonging to nonresident holders of its bonds. Manifestly a different case from the one at bar.

The case of *New Jersey v. Wilson*, 7 *Cranch*, 150, was also relied upon by appellee in the lower court to sustain its contention that the lessees of its exempt property were entitled to the exemption. An examination of this case discloses that the decision of the court was arrived at solely because the State of New Jersey, through her Legislature, consented to the sale of the exempt property with all its privileges and immunities.

Therefore, we respectfully submit that the property which the lessees have in and upon their leasehold interests, by virtue of the improvements erected thereon, is property, and therefore taxable by the State of Tennessee, without in any way impairing, diminishing or affecting appellee's charter exemption.

IV.

Appellee's charter exemption is personal to it.

It is well settled that immunity from taxation is not transferable; it is a privilege personal to the grantee. Pickard v. E. T. V. & G. Ry. Co., 130 U. S., 631; State v. Mercantile Bank, 160 U. S. 161.

The intent to confer an exemption, and especially when it is insisted that the exemption passes to a transferee of the original grantee, must be clear beyond a reasonable doubt. Railroad Tax Cases, 18 Wall., 226; Providence Bank v. Billings, 4 Peters, 565.

V.

In any event, the decree of the lower court should be modified so as to restrict its effect to proceedings under the alleged unconstitutional provisions of the Act of 1903.

We, of course, do not admit that any of the provisions of the act of 1903 are unconstitutional, but even if the Circuit Court is right in its holding as to the effect of said provisions, nevertheless, its decree should have been restricted to holding that the State and county of Franklin could not lawfully assess the property of the lessees under the provisions so held by it to be in contravention of the Constitution of the State and of the United States, but the court went further than this and virtually held, as shown by its final decree and its opinion rendered on the hearing of the demurrer and the application for a preliminary injunction and made a part of the decree (Rec. pp. 190-192), that the State and county could not lawfully assess the leasehold interests of appellee's lessees for taxes—*that such interests are exempt from taxation*—and perpetually enjoined appellants from assessing or attempting to assess for taxes the interests of said

lessees for any purpose or under any statute. It is true it is not so expressly written into the decree, but such is its meaning when read along with the opinion of the court (Rec. pp. 35-42), which is made a part of the decree. Unde. the pleadings, upon the view of the case most favorable to appellee, the court was without power to do more than to restrain appellants, representing the State and county of Franklin, from attempting to assess the property in question under the alleged unconstitutional provisions of the act of 1903—leaving it open to the State, if it so desired, to remedy the alleged defects of said act. And this is done, as shown by the assessment act of 1907, the provisions of which, applicable to the questions involved here, are printed in the appendix to this brief.

As hereinbefore stated, prior to this controversy, it was never thought to be necessary to enumerate in any assessment act the hundreds of charter exemptions which have been granted by the Legislature of Tennessee—nor was it ever supposed that the provisions of the assessment act placing a lien upon the entire property would be construed as in any way affecting exempt property, as hereinbefore shown.

However, after the holding of the opinion by the learned judge who sat upon the trial of this cause in the lower court, that the provisions of the act of 1903 complained of by appellee were invalid as impairing its charter contract because said act contained no ex-

press exception as to said charter contract or enumeration of appellee's property in the exemption clause, and that under Section 32 the taxes sought to be levied upon the leasehold interests were a lien upon the property of appellee, the General Assembly, in order to avoid for the future any possibility of such contests as are at present involved in this case, expressly exempted from taxation all valid charter exemptions, and provided that the lien of the taxes should not apply or affect any fee in property where the same is exempt from taxation. In our opinion, these provisions of the act of 1907 were not necessary either to protect appellee or enable appellants to tax the property interests of appellee's lessees.

However, certain it is that the State's right to tax such property interests cannot now be subjected to the attack made by the bill in this case, and but for the injunction awarded by the decree of the lower court, proceedings might be commenced under the act of 1907 to assess for taxation the property rights of appellee's lessees.

So, we say that in any event the decree of the lower court should be modified as above stated.

It is proper to show your Honors that the enactment of the assessment act of 1907, which repealed the act of 1903, does not abate or in any way affect the proceedings instituted before the Trustee of Franklin

County under said act of 1903, because, by the Code of Tennessee (Shannon), Section 61, it is provided as follows:

"The repeal of a statute does not affect any right which accrued, any duty imposed, any penalty incurred, nor any proceedings commenced, under or by virtue of the statute repealed."

VI.

The effect of the decision of the Circuit Court.

In conclusion, we submit that, in determining whether the property rights and interests of the several lessees of appellee, as shown in this record, are taxable under the Constitution and laws of the State of Tennessee, it is proper to consider the effect of the holding of the lower court that such interests are exempt from taxation.

It is the declared policy of the State that all property shall be taxed and that the burdens of taxation shall operate equally and uniformly upon all property in the State, except where an exemption from taxation has been lawfully created. No claim is made here that any property interest of appellee can be taxed—the Constitution of the State protects its exemption to the fullest extent. But can it be conceived that the Legislature, in granting the exemption contained in appellee's charter, intended to thereby preclude the State from taxing all interests in such

property which in the course of time may pass to other persons dealing with appellee—that is, where appellee has parted with its title to a particular interest in said property, whether such interest be for a term of years or merely improvements erected upon the property?

We ask your Honors to look at conditions existing now and which in the course of time may come into existence. Upon the thousand acres exempt to appellee under its charter, there has been already built a thriving town, having a population of about 1,200 inhabitants, who have built upon the lots leased to them for terms ranging from ten to thirty-three years, valuable improvements, worth many thousands of dollars. Every building has been erected by the lessees at their own expense, for their own personal use or investment for profit. Many of the lessees have several leaseholds—some of them are nonresidents, whose only connection with the property is to take leaseholds, build improvements thereon, and rent the same for profit. Such property belongs to the lessees—it can never belong to appellee, except, as provided in the leases, by payment of the value thereof to the lessees. In the course of time, upon this reserved domain, the town of Sewanee may grow into a populous city, the buildings and improvements in which have been erected solely at the expense of the lessees of appellee, and will be owned by said lessees. Shall such property enjoy the protection of the law and at

the same time escape any part of the burdens of government distributed uniformly over the people of the State?

Further, appellee, in addition to the reservation of 1,000 acres, owns a magnificent domain of perhaps 8,000 acres, underlying which is the famous Sewanee coal vein. This property, when used solely for the purposes for which appellee was created, is exempt from taxation under the statutes of Tennessee. And under the holding of the Supreme Court of Tennessee in Vanderbilt University v. Cheney, *supra*, appellee may rent or lease this property, and for any term of years, either to individuals, firms or corporations, and so long as the rentals are devoted to the purposes for which appellee was created, *no tax can be levied against appellee.*

But what about the property interest of its lessees? Suppose appellee should by lease at a rental agreed upon permit great mines to be opened and developed upon said property at the cost of hundreds of thousands of dollars to the lessees, would not the interests of the lessees in such mines be taxable as against the lessees? Shall such property escape its due share of taxes which the Constitution requires shall be equal and uniform throughout the State? It would seem that the statement of these questions contain their answer, and that it not only cannot be contended that it appears beyond a reasonable doubt, or even that it

can reasonably be contended, that it was the intention of the Legislature that appellee's charter exemption should extend to such property rights.

For these reasons, we respectfully submit that the decree of the lower court should be reversed, and the bill dismissed.

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Attorney General of Tennessee.

FRANK L. LYNCH,
FELIX D. LYNCH,
I. G. PHILLIPS,
THOMAS B. LYTLE,
Attorneys for Appellants.

APPENDIX.

Constitutional and Statutory Provisions Referred to in the Brief.

Constitution of Tennessee among other things provides:

"That no retrospective law, or law impairing the obligations of contracts, shall be made."

(Art. 1, Sec. 20, page 47.)

Taxation, merchant, and privileges.—"All property, real, personal or mixed, shall be taxed, but the legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes, and such as may be held and used for purposes purely religious, charitable, scientific, literary or educational, and shall except one thousand dollars' worth of personal property in the hands of each taxpayer, and the direct product of the soil in the hands of the producer, and his immediate vendee. All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State." . . . .

(Art 2, Section 28, page 59.)

Acts of 1903, Chapter 258, among other things provides:

"*Be it enacted by the General Assembly of the State of Tennessee*, That all property, real, personal and mixed, shall be assessed, for taxation for State, county, and municipal purposes, except such as is declared exempt in the next section."

(Section 1, page 632.)

"That the property herein enumerated, and none other, shall be exempt from taxation."

(Section 2, page 632.)

"All property belonging to any religious, charitable, scientific, or educational institutions, when used exclusively for the purpose for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the State shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

(Part 2, Section 2, Chapter 258, page 632.)

"That the basis of all assessments shall be as follows, to-wit:

(1) "To assess the property to the person or persons owning or claiming to own the same on the 10th day of January of the year for which the assessment is made, if known; if not, to unknown owners."

(Section 5, Chap. 258, page 633.)

(5) "That hereafter all mineral, timber, or other interests in fee for life or for a term of years in real estate in this State owned separate from the general freehold, shall be assessed to the owner thereof separate from the other interests in such real estate which other interests shall be assessed to the owner thereof, all of which shall be assessed as real estate."

(Section 5, Chap. 258, page 634.)

"That any property or properties included in this Act shall be back, or reassessed for the period now provided by law, viz:

(1) "When the same have been omitted from or escaped taxation." . . . . . .

(Subsections 2, 3, 4 and 5 are not material.)

(6) "Whenever it is within his knowledge or he has reason to suspect in his county that any property has, in violation of this Act, as above prescribed been assessed by any assessor, or computed by any Board of Equalizers at less than its actual cash value, it shall become the duty of any revenue agent, of any District Attorney, of any attorney of the county, of the Judge or Chairman of the County Court, of the County Court Clerk, of any Circuit, Chancery, and Criminal Court Clerk, of any Sheriff, and of any citizen of the county, to cause or have the County Court Clerk, in the case of merchants' taxes, and the County Trustee, in case of other taxes covered by this Act, to have issued the citation hereinafter set out, for the purpose of back or reassessing such property. At the request of or upon the information or motion of any citizen or taxpayer of the State, or of any of the officers above named, it shall be the duty of the County Court Clerk, in the case of merchants' taxes, and the County Trustee, in the case of other taxes covered by this Act, to issue, for the purpose of back or reassessing property, the citation hereafter set out. The County Court Clerk, in the case of merchants' taxes, and the County Trustee, in the case of other taxes covered by this Act, to issue, for the purpose of back or reassessing property, the citation hereafter set out. The County Court Clerk, in the case of merchants' taxes, and the County Trustee, in the case of other taxes covered by this Act, upon the motion or information, or at the request of any citizen or taxpayer of the State, or of any of the officials before designated, or when the same is within the knowledge of, or suspected by the County Court Clerk, or County Trustee, shall issue as to any property assessed or valued in violation of this Act, at less than the actual cash value of the same, a citation to be served by any officer of the county or of any district thereof, upon the owner of the property, or his agent, or representative, or attorney, summoning him to appear before such Clerk or County Trustee, at his office giving not less than five days' notice from the date of the issuance of the citation and show cause, if any, why said property should not be back or reassessed at its actual cash value.

The form of citation shall be substantially as follows, viz:

State of Tennessee.....County,

To..... at..... Tenn.

Proper motion having been made before me by..... State Revenue Agent for the State of Tennessee under Section..... ..... Chapter..... . of the Acts of Tennessee, 190..... .

You are hereby cited to appear before me..... .....Trustee or County Court Clerk for..... .....County, Tennessee, at my office in the courthouse in.... ..... Tennessee, on the.....day of..... .....1903, at.....o'clock.....M., for the purpose of being assessed or reassessed for the years .... .. upon omitted or inadequately assessed property in the said county and State, and show cause, if any, why said property should not be back or reassessed at its actual cash value.

Trustee or County Court Clerk.....County, Tenn.

Issued at office this.....day of.. . .....190.... .

The officials herein named as having power to back or reassess property, are vested with full authority to administer oaths, send for and examine witnesses, and take such steps as may be deemed necessary or material to obtain information and evidence as to the value of the property. Said witnesses, when properly summoned, shall be amenable to existing laws for non-attendance or failure to give evidence which is in their knowledge.

Said officials herein vested with the power to back or reassess property shall have full authority, in proceedings, to back or reassess such property, to make proper, correct and adequate assessments of the same at its actual cash value, which, when entered upon the tax books or filed in writing with the authorized

tax-collecting authority, shall become a final and valid assessment of the property, and collectible as such, as fully and amply as if originally entered upon the assessment rolls."

(Section 31, Chapter 258, pages 661, 662.)

"That the assessed taxes on all real estate, personalty, railroad, telegraph and telephone companies, and all damages and costs accruing thereon, shall be and remain a first lien upon such property from the 10th of January of each and every year for the taxes of that year; and said taxes shall be a lien upon the fee in said property, and *not* merely upon the interest of the person to whom said property is, or ought to be assessed, but to any and all other interests in said property, whether in reversion or remainder, or of lienors, or of any nature whatever, and the whole proceeding for collection of taxes from the assessment to sale for delinquency shall be a proceeding in rem, and shall not be invalid on account of such land having been listed or assessed for taxation to any one as owner or owners, or to any person or persons, not the owner or owners, or to unknown owner or owners."

(Section 32, Chapter 258, page 663.)

"That the Secretary of State, Treasurer, and Comptroller of the Treasury of the State, and their successors in office, are hereby created a State Board of Equalization and invested with the powers and required to perform the duties hereinafter prescribed, viz.:

. . . . . .

(Section 38, Chapter 258, page 671.)

(11) "Said State Board of Equalization shall also hear appeals upon matters of back or reassessments made by revenue agents or other officers of the State from County Trustees or County Court Clerks. The right of appeal from the decision of said Trustees or County Court Clerks in the matter of back or reassessments is hereby given to the State and county or party

assessed or reassessed; provided, said appeal is prosecuted within ten days from the date of such back or reassessment or attempt to back or reassess, and the said Trustee or County Court Clerk shall, upon such appeal being perfected, certify his action to the State Board of Equalizers, whose duty it shall be to hear the matter in controversy within ten days from the filing with them, or either of them, the notice of appeal, provided said board is then in session."

(Section 38, Chapter 258, page 674.)

Acts of 1907, Chapter 602, among other things, provides:

(1) "*Be it enacted by the General Assembly of the State of Tennessee*, That all property—real, personal and mixed—shall be assessed for taxation for the State, county and municipal purposes, except such as is declared exempt in the next section."

(2) "*Be it further enacted*, That the property herein enumerated, and none other, shall be exempt from taxation." . . .

. . . . . .

(2) "All property belonging to any religious, charitable, scientific or educational institutions, when used exclusively for the purpose for which said institution was created, or is unimproved and yields no income. All property belonging to such institution used in secular business and competing with a like business that pays taxes to the State shall be taxed on its whole or partial value in proportion as the same may be used in competition with secular business."

. . . . . .

(7) "All property protected by valid charter or contract exemption."

(Section 2, Chapter 602, page 2047.)

"*Be it further enacted*, That the basis of all assessments shall be as follows—to wit:

"To assess the property to the person or persons owning or claiming to own the same on the 10th day of January of the year for which the assessment is made, if known; if not, to unknown owners."

(Section 5, Chapter 602, page 2048.)

"That hereafter all mineral and timber interests and all other interests of whatsoever kind or character, whether for life or a term of years, in real estate, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof separately from the other interests in such real estate, which other interest shall be assessed to the owner thereof, all of which shall be assessed as real estate."

(Section 5, Part 5, Chapter 602, page 2049.)

"*Be it further enacted*, That the assessed taxes on all real estate personalty, railroad, telegraph and telephone companies, and all damages and costs accruing thereon shall be and remain a first lien upon such property from the tenth of January of each and every year for the taxes of that year; and said taxes shall be a lien upon the fee in said property, and not merely upon the interest of the person to whom said property is or ought to be assessed, but to any and all other interests in said property, whether in reversion or remainder or of lienors, or of any nature whatever, and the whole proceeding for collection of taxes from the assessment to sale of delinquent shall be a proceeding *in rem*, and shall not be invalid on account of such land having been listed or assessed for taxation to any one as owner or owners or to any person or persons not the owner or owners

or to unknown owner or owners; *Provided, however*, That where there is assessable under this act a leasehold interest in real estate or any improvements on real estate, which said real estate is exempt from taxation in the hands of and to the owner thereof, the taxes assessed against such leasehold interest or interest in improvements on such exempt real estate shall be a lien only upon such leasehold interest or interest in improvements, and not upon the interest of the owner of the fee or the remainder or reversion of the fee."

(Section 31, Chapter 602, pages 2082 and 2083.)

NOTE—The other provisions of the Acts of 1907 are not materially different from those of the Acts of 1903 where they bear upon the questions involved in this case.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 482.

James R. Jetton,

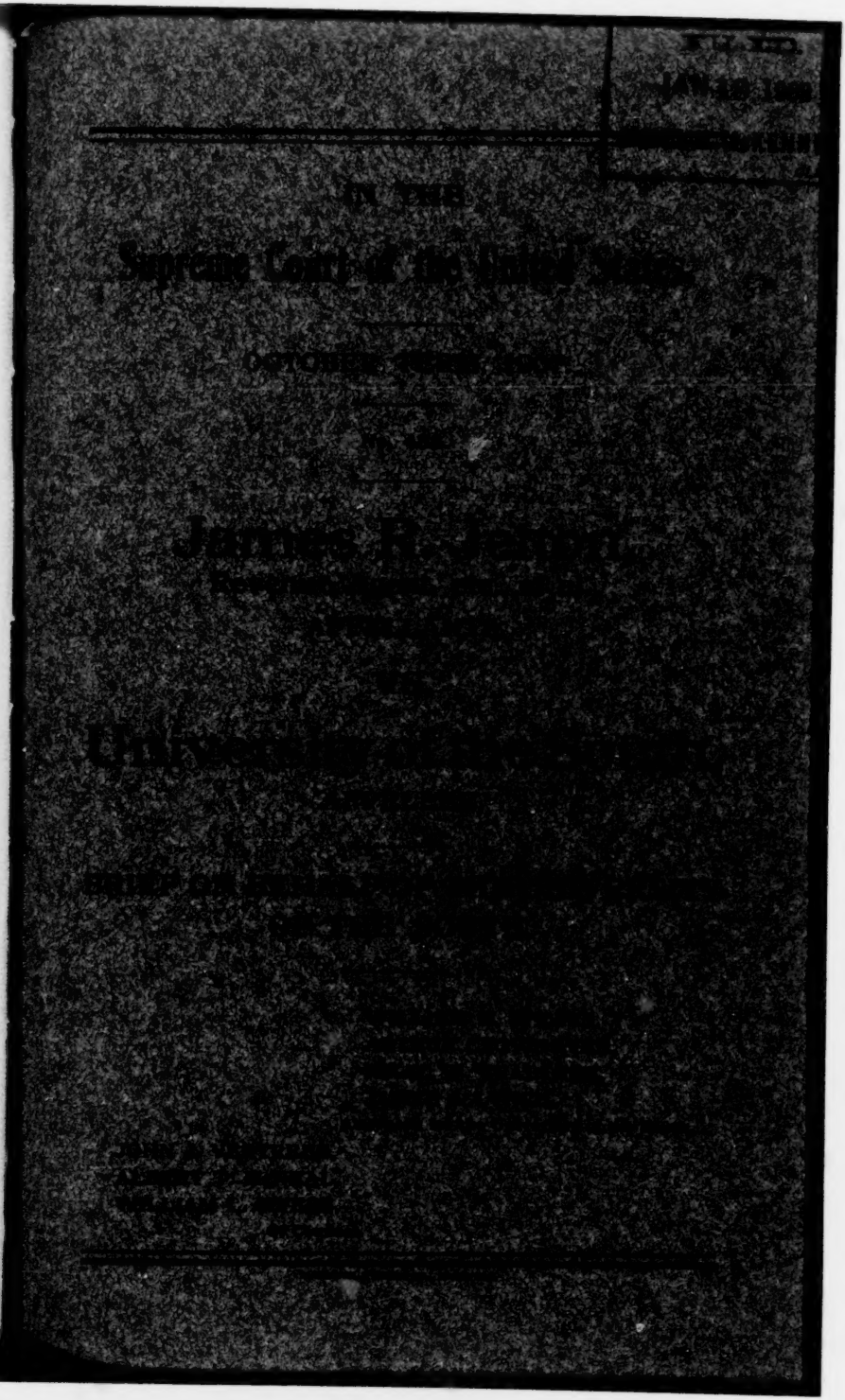
APPELLANT,

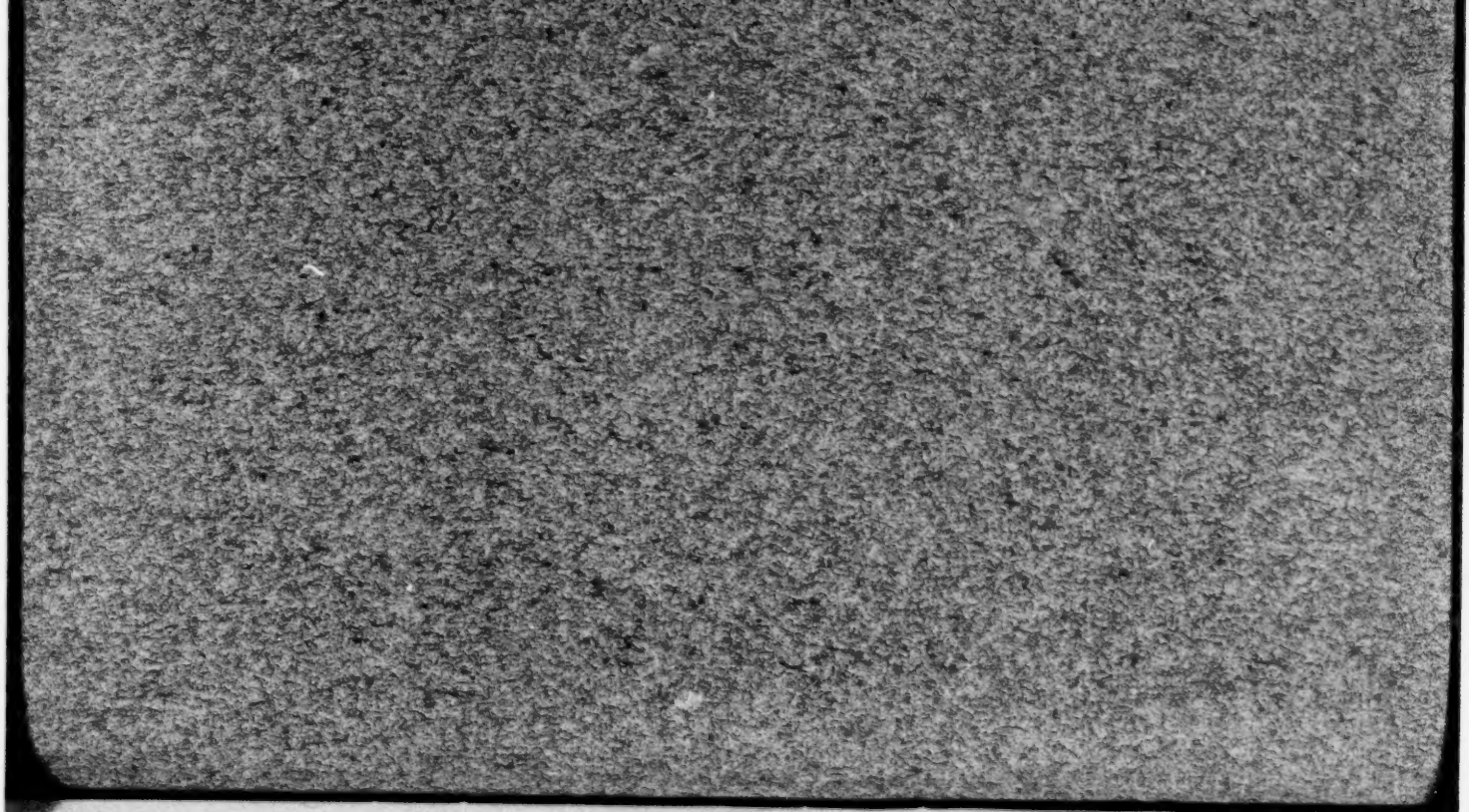
vs.

University of the South,

APPELLEE.

BRIEF ON BEHALF OF THE UNIVERSITY OF THE SOUTH.





IN THE

Supreme Court of the United States.

OCTOBER TERM, 1907.

JAMES R. JETTON, Revenue Agent, etc., et al,
Appellants,

vs. } No. 488.

THE UNIVERSITY OF THE SOUTH,
Appellee.

BRIEF ON BEHALF OF THE APPELLEE.

May it please the Court:

This cause was brought to this Court by the appellants on appeal from a decree of the United States Circuit Court for the Middle District of Tennessee, in favor of the appellee, the University of the South. The appellants have appealed to this Court under the authority of the 5th section of the Act of March 3, 1891, creating the Circuit Court of Appeals, by which act jurisdiction is conferred upon this Court to review, by direct appeal, any final judgment rendered in the Circuit Court "in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

The suit was instituted by the University of the South to protect its lessees and tenants from an attempt to illegally assess them with taxes.

The complainant insisted that the property was exempt from taxation under the University's charter, granted by the State, and that the Assessment Act, under which appellants were proceeding to assess this property, was void, because it impaired the obligation of the charter referred to, which was in derogation of Section 10, Article I, of the Constitution of the United States; and because such assessment was without notice to the University, and violated the due process clause of the fourteenth amendment to the Constitution.

A correct statement of the case can best be had by a brief review of the pleadings.

THE COMPLAINANT'S BILL.

The bill was originally filed on behalf of the University of the South and several of its lessees, against James R. Jetton, Revenue Agent for the State of Tennessee, the County of Franklin, and D. S. Osborne, Trustee for Franklin County.

The bill charged that the University of the South was organized and chartered by an Act of the General Assembly of the State of Tennessee, passed January 6, 1858, a copy of which charter is hereto appended, together with a copy of an amendment passed by the General Assembly of Tennessee, on January 19th, 1860.

The bill set forth the circumstances under which this charter was granted, as follows:

> "On July 1st, 1856, Rt. Rev. Leonidas Polk, a Bishop of the Protestant Episcopal Church, set forth in a letter to his church associates of the dioceses or States of Tennessee, Georgia, Alabama, Arkansas, Texas, Mississippi, Florida, South Carolina and North Carolina, the idea and conception of this University.

"On the 23d of October, 1856, all of the Bishops of the dioceses and States above named united in a circular letter on the subject, addressed to the members and friends of the church in these States. As a result of these efforts, representatives from the ten States mentioned met on Lookout Mountin, near Chattanooga, Tennessee, on July 4th, 1857, to take action in the matter of establishing a great university in the South. While this organized action was taken by representative Episcopal churchmen of these Southern States, the movement was not sectional in a political sense, nor sectarian in a religious sense. At the same time, the scheme required of necessity united and harmonious action, so the effort to establish this university was made under the auspices and control of the Protestant Episcopal Church. The enterprise was one in which the people of these ten States generally were very much interested, one in which the public, regardless of denominational feeling, felt and exhibited great interest. There was a great deal of competition and rivalry as to the site of the proposed university, and many inducements offered by various localities in Alabama, Mississippi, Tennessee, Georgia and the Carolinas. The citizens of these various localities made strenuous efforts to secure the location of the university, but it was decided finally to locate the same at Sewanee, in Franklin County, Tennessee, provided a proper charter could be obtained from the State of Tennessee.

"This decision to locate the University at Sewanee was reached by a committee appointed at said Lookout Mountain meeting.

"At the time, there was no village at Sewanee, not even a station house. It was a wilderness on the top of the plateau of the Cumberland Mountains, removed from any city or town. The land was cheap, at that time being used for no other purpose. It seemed best to the committee representing the originators of this institution that they should endeavor to locate the same so that it would be removed altogether from the dangers and temp-

tations of town or city life. To consummate this plan, it was necessary for the University to own its own domain and the surrounding territory, to the end that no evil influences or objectionable people or institutions could establish themselves near the University. In other words, in order to carry out this scheme of isolation, and have a University that could be kept removed from all objectionable influences and associations, which seemed so desirable to the founders of this institution, it was necessary for the University to have sufficient property at and around the University that its managers and trustees would be able to say who should and who should not be located thereon, and what should and what should not be built thereon; so that the University might be developed and maintained free from all adverse influences, and create its own environment, and bring into being and gather around it all the complicated relations and necessary factors in its existence and for its successful development—not only school buildings and houses of professors and of the officers of the University—boarding houses, shops of tailors, shoemakers, grocers, shopkeepers of all kinds, laborers' houses, etc., were necessary factors for the erection and maintenance of the University.

"All of these things were considered by the founders of the University, and by the committee selected to secure a location for same, and also by the committee selected to secure a charter from the State of Tennessee, it having been decided, as aforesaid, that the University should be located at Sewanee, if a proper and satisfactory charter could be obtained from the State.

"This committee selected to draft the charter had for its chairman Mr. Francis B. Fogg, an eminent lawyer of the Nashville bar. The charter was prepared by this committee, submitted to the association for its approval, and, on the 6th day of January, 1858, it was granted by the Legislature of the State of Tennessee, as hereinbefore set out.

"Immediately after the grant of its corporation powers, the University of the South was regularly organized at a regular meeting of its trustees, and said charter and corporate rights were accepted in regular form.

"Upon the faith of said charter and powers and rights therein granted, large donations were made to the University of the South, and it acquired title to a large body of mountain land at Sewanee, Tennessee: and, in November, 1861, had surveyed out and laid off one thousand acres, which was then and thereafter known as the University Reservation, which, under Section 10 of this charter, it had a right to own and hold free from taxation."

It will be noticed that Section 10 of the charter reads as follows:

"*Be it further enacted,* That said University may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution and the students thereof from the intrusion of evil-minded persons who may settle near said institution, said land, however, not to exceed ten thousand acres, one thousand of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said University."

This exemption from taxation was respected by the State and county until the year 1887, when the officers of the State and county attempted to assess and back assess the University of the South for taxes on this one thousand acres and all improvements thereon.

The University filed an original bill in the Chancery Court of Franklin County, against A. J. Skidmore, who was at that time the Trustee of Franklin County, to enjoin him from assessing and back-assessing said property. Franklin County filed a cross-bill in said cause, seeking to enforce the right of said county to assess and back-assess said property, insisting that a large part of said property had been leased out by the Uni-

versity, and that by so doing the University had lost its right of exemption from taxation. The cause was heard before the Chancellor, and he decreed that all of said leased property, except that occupied by the professors and officers of the University, was subject to taxation. On appeal, this decree was reversed by the Supreme Court of Tennessee, which Court held that the University was not subject to taxation on this property. The Court held that the charter of the University was a valid contract between the State of Tennessee and said University, under and by the terms of which the University had a right to immunity from taxation as long as the legal title to this one thousand acres remained in it. The Court further held that the leasing out of the property was not a waiver of this right. The opinion of the Supreme Court in said cause is reported in 87 Tenn., 155.

Thereafter, neither the University nor its tenants were called upon to pay any taxes on this property to the State and county until August, 1906, when Appellant Jetton, State Revenue Agent for the Middle Division of Tennessee, caused to be issued by the appellant, Osborne, who was the Trustee of Franklin County, notices to all persons occupying said one thousand acres of land as lessees or tenants from the appellee, University of the South. Said notices were to the effect that, on the 13th day of August, 1906, the said Trustee of Franklin County would assess and back-assess said tenants and lessees for the years 1903, 1904, 1905 and 1906. The bill set out the list of tenants and lessees holding under the University of the South, and alleged that the premises occupied by them under their leases were all covered by the one thousand acres held by the University under Section 10 of its charter.

On the 13th day of August, 1906, said lessees appeared before said Trustee, by their attorneys, and insisted that said property was exempt under the charter of the University. This claim for exemption, however, was disregarded by the Trustee, and the property of one of the lessees, Mrs. Hoeffer, was assessed and back-assessed for the years mentioned. The bill set out the assessment, which was prepared and signed by D. S. Osborne, Trustee. The property was assessed as the "lease-

hold interest in lot and buildings thereon." The boundaries are also set out in the assessment.

The Trustee, in his assessment, recited:

> "Said property is subject to assessment and back-assessment by virtue of the Acts of 1903, Chapter 258, of the General Assembly of Tennessee."

Said Trustee continued the other cases against the lessees until September 10th, 1906, and announced that, under the same facts, he would assess and back-assess the other lessees in like manner.

The eighth section of the bill sets out the various features of the general assessment law passed by the General Assembly of Tennessee on April 9th, 1903, and published in the Acts of that year, Chapter 258, Section 1 of which provides:

> "That all property, real, personal and mixed, shall be assessed for taxation for State, county and municipal purposes, except such as are declared exempt in the second section of the act."

The second section provides:

> "The property herein enumerated, and no other, shall be exempt from taxation."

The property enumerated consists of the property of the general government, State, counties and municipalities of the State.

The act also exempts:

> "All property belonging to any religious, charitable, scientific or educational institutions, when used exclusively for the purpose for which said institution was created, or is unimproved and yielding no income. All property belonging to such institutions used in secular business, and competing with like business that pays taxes to the State, shall

be taxed on its whole or partial value, in proportion as the same may be used in competition with secular business."

No provision is made in this act for the protection of property exempted by charters of corporations and educational institutions such as the complainant University.

The bill set out Subsection 5 of Section 5 of the act as follows:

> "That, hereafter, all mineral, timber or other interests in fee, for life, *or for a term of years,* in real estate in this State, owned separate from the general freehold, shall be assessed to the owner thereof separate from the other interests in such real estate, which other interests shall be assessed to the owner thereof; all of which shall be assessed as real estate."

Section 32 is also set out, as follows:

> "That the assessed taxes on all real estate, personalty, railroad, telegraph and telephone companies, and all damages or costs accruing thereon, shall be and remain a first lien upon such property from the 10th of January of each and every year for the taxes of that year; and said taxes shall be a lien upon the fee in said property, and not merely upon the interest of the person to whom said property is or ought to be assessed, but to any and all other interests in said property, whether in reversion or remainder, or of leinors, or of any nature whatever, and the whole proceedings for the collection of taxes from the assessment to sale for delinquency shall be a proceeding *in rem,* and shall not be invalid on account of such land having been listed or assessed for taxation to any one as owner or owners, or to any person or persons not the owner or owners, or to unknown owner or owners."

The act also contains a provision for the back-assessment of omitted or inadequately assessed property, for penalties for nonpayment of taxes, and for the sale of the property of delinquent property owners.

The bill charged that this act changed the existing rule as to the taxation of leasehold estates; that, by the terms of Subsection 5 of section 5 of the act hereinbefore set out, the lessee was made liable directly for taxes; whereas, at the time the charter was granted, the University, and at all times prior to the passage of the Act of 1903, the owner of the fee alone was assessable for taxes.

On this point the bill charged:

> "At the time the charter was granted, the University was liable for taxes on every interest in the property. The State contracted to exempt this property of the University from taxation. This exemption, under the law as it existed at that time, applied as well to leasehold interests as to any other interest in the property; it included the whole property."

And again:

> "It is now insisted that the State has a right to impair the obligation of this charter contract and all rights and contracts growing out of the same, by simply passing this act requiring the property to be assessed to the lessees."

Sections 10, 11 and 12 of the bill are as follows:

> "10. As before shown, the University of the South derives an important part of its necessary revenue by which it is maintained, from rents received from its co-complainant lessees. While, as before shown, the taxes complained of in this bill have been assessed, and will be assessed against the lessees, it is none the less taxation against the University of the South, because it is a tax on the rental value of the property, and will necessarily decrease the amount of rents received from the lessees. The fact that this property was exempt from State and county taxation was taken into consideration in fixing the amount of rent to be paid to the University at the time these leases were executed; and as these leases are all renewed, and as new leases are executed, it will be impossible for the Univer-

sity to collect the same amount of rental, as it otherwise could, because the amount of taxes to be paid would necessarily be taken into consideration and be deducted from the amount of rents which the lessees would otherwise be able and willing to pay. In this way, this whole tax will be a direct burden on the University of the South, and will greatly impair, if not practically destroy, the revenue it would otherwise receive from this property; and it would impair and absolutely destroy the force and effect of its charter exemption, so far as this leased property is concerned. The lessees are merely the agencies through whom these officers are seeking to tax this property of the University.

"11. Complainants charge that the Act of the General Assembly of 1903, hereinbefore referred to, as construed and enforced by the officials of the State of Tennessee, impairs and practically nullifies the contract betwen the University of the South and the State of Tennessee, as set forth in Section 10 of the charter of said University, as hereinbefore recited; and this is in derogation of Section 10, Article I, of the Constitution of the United States, prohibiting any State from passing any law impairing an obligation of a contract.

"12. Complainants charge that this Act of 1903, providing that taxes assessed against the lessee shall become a lien on the title of the owner of the property without any notice or process to the owner, has been sustained as a valid law by the Supreme Court of Tennessee, and that by and under the terms of the act, as construed and enforced by the Courts and officials of the State of Tennessee, it is provided that the exemption contract between the State of Tennessee and the University of the South shall not only be nullified, but that the property of the University of the South shall be sold for taxes assessed against its tenants without notice or any process whatever as to the University of the South, and without giving said University any chance to be heard, and without providing any remedy whatever to said University of the South. Com-

plainants, therefore, charge that this act violates the Fourteenth Amendment to the Constitution of the United States, in that it provides for the taking of property of the University of the South without due process of law, and because it denies to all of said complainants the equal protection of the laws."

The bill further charged that there was no remedy at law whatever for the University, and that there was no adequate remedy for any of the lessees.

It is charged that the amount involved was more than two thousand ($2,000) dollars, and that the taxes for the years for which they were attempting to back-assess the property would amount to more than fourteen thousand ($14,000) dollars.

The bill further charged that no decree protecting its charter exemption could be had in a State court, because, under the rules of the Supreme Court of that State, no adjudication of a tax case has any binding effect except as to the year's taxes actually involved in the litigation.

The Circuit Court was asked to assume jurisdiction and issue an injunction restraining the attempt to assess these lessees, because neither the University nor the lessees had any adequate remedy at law, and because it was necessary to prevent a multiplicity of suits, and to prevent a cloud from being cast upon the University's title.

Rec., pp. 1-19.

DEMURRER.

The demurrer raised the following questions:

1. That the Court had no jurisdiction, because the complainants and defendants were citizens of the same State, and that it was not shown in the bill that the complainants had any rights under the laws or Constitution of the United States that had been violated.

2. Because the Court had no jurisdiction as to the lessees.

3. Because the tax proceeding was, in effect, a suit in the State Court which could not be enjoined by the Circuit Court.

4. Because complainant's bill was, in effect, a suit against the State.

5. Because the bill did not state a case giving a court of equity jurisdiction.

6. Because there was a complete remedy at law.

7. Because no taxes were sought to be assessed against the University of the South.

The 8th, 9th and 10th causes of demurrer went to that part of the bill making the lessees complainants.

Rec., pp. 23 and 24.

The demurrer was sustained as to the lessees, and overruled as to the University of the South.

Rec., pp. 35 to 43, inclusive.

THE ANSWER.

The defendants answered the bill, making the same defenses as set out in the demurrer. They disclaimed any intention of assessing taxes against the University, or creating any lien on the *title* of the University. The defendants insisted, however, that all of the improvements put on the leased property belonged to the lessees, and were taxable by the State and county.

The defendants also insisted that the charter of the University did not exempt its lessees from taxation, and that defendants had a right under the Assessment Act of 1903, to assess said improvements for taxation, and also to assess the value of the leasehold estates.

Rec., pp. 25 34.

Proof was taken by the complainants, and every allegation made in the bill amply sustained. Upon final hearing, the injunction was made perpetual and full relief given the University against any attempt to assess it or its lessees.

Rec., pp. 191, 192.

ARGUMENT FOR UNIVERSITY OF THE SOUTH.

In presenting this case we will follow the line adopted by counsel for appellants in their brief, and discuss, first, the question of jurisdiction, and then the merits of the controversy.

THE FEDERAL QUESTION.

In beginning their argument, counsel for appellants say: "We submit *that no Federal question was made by the bill.*"

If counsel are correct in this, then *this Court has no jurisdiction of the appeal.* By the Act of March 3, 1891, creating the Court of Civil Appeals and defining their jurisdiction, it is provided that an appeal may be had to this Court directly from a Circuit Court "in any case in which the Constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

This statute was construed by this Court in the case of *Penn Mutual Life Ins. Co.* v. *City of Austin*, 168 U. S., 686, where it was held that the right of a direct appeal to this Court existed "whenever it is claimed on the record that a law of a State is in contravention of the Federal Constitution. Of course, the claim must be real and colorable, not fictitious and fraudulent."

The Court further say:

> "The contention here made, however, is not that the bill, without color of right, alleges that a State law and city ordinances violate the Constitution of the United States, but that such claim as alleged in the bill is legally

> unsound. The argument, then, in effect, is that the right to a direct appeal to this Court does not exist where it is claimed that a State law violates the Constitution of the United States, unless the claim is well founded. *But it can not be decided whether the claim is meritorious and should be maintained without taking jurisdiction of the case.*"

For the same reason it has been frequently held by this Court that when the bill on its face charges, in good faith, that the law of a State violates some right of the complainant, in violation of some provision of the Federal Constitution, then the Circuit Court has jurisdiction, whether the claim be well founded or not; because the Court can not decide whether the claim be well founded until it assumes jurisdiction to try that question.

In the case of *Louisville Trust Company* v. *Stone,* 107 Fed., 305, a bill was filed in the Circuit Court to enjoin the board of valuation and assessment of the State of Kentucky from assessing the property of the complainant at more than 70 per cent of its value, alleging that the defendant, by its proposed method of assessment, denied to the complainant equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

It was held that the complainant had not sustained its alllegation with reference to the discrimination charged, and the denial of the equal protection of the laws. The Court held, however, that the complainant was entitled to some relief on other grounds. Mr. Justice Day, speaking for the Court, said:

> "Notwithstanding the failure of complainant to establish its right to relief upon the ground of Federal jurisdiction, alleging the unjust discrimination against it in assessing its property, at its full value, while other property in the State was assessed at 70 per cent of its value, thus depriving complainant of the equal protection of the laws under the Fourteenth Amendment, the jurisdiction of the Court having been invoked for that purpose, the

bill may be retained to administer full relief concerning the assessment upon the property of the complainant based upon the ownership of said shares of stock in the Mattingly Company. If the claim to relief clearly within the Federal jurisdiction, is fair and colorable, not fictitious and fraudulent, jurisdiction attaches, although the ultimate decision may be against the right claimed. *Penn Mutual Life Ins. Co.* v. *City of Austin*, 168 U. S., 695. When the jurisdiction has properly attached it extends to the whole cause, and all the issues involved, whether of a Federal or non-Federal character, and the Court has power to decide upon all questions involved."

And again:

"The federal jurisdiction having been properly invoked, we may examine into the other questions made in the case, notwithstanding as to them there may be a remedy in the State Court."

In the case of *Ill. Cent. R. R. Co.* v. *Adams*, 180 U. S., 28, the bill was filed in the Circuit Court by the complainant railroad company to enjoin the State railroad commission from approving and certifying the assessment for taxes against the Canton, Aberdeen & Nashville Railroad, and to also enjoin the Revenue Agent from beginning any other suits, or advising the bringing of such suits against said company for the collection of taxes. It was insisted that the Circuit Court had no jurisdiction.

The bill in the case alleged that said railroad company was exempt from taxation under its charter, and that this exemption had been repeatedly recognized by the State, and sustained by the Supreme Court of the State; that the property had been leased to the complainant, Illinois Central Railroad, and that it, the complainant, was in possession of the property.

The bill further averred that the defendants, *"claiming to act under the laws of said State,* passed subsequent to the charter and its acceptance, are endeavoring and will illegally impair and destroy the obligation of said charter contract as aforesaid,

unless restrained by your honors; . . . . and that they are also attempting and claim that they have succeeded in fastening upon said railroad a first and paramount lien under the Acts of said State passed in 1892 and 1894, and acts done by them in 1898, which displaces and is paramount to the lien to secure said mortgage bond."

Mr. Justice Brown, speaking for the Court, said:

> "The bill clearly avers a case arising under the Constitution of the United States, and is one of which the Circuit Court would have jurisdiction, irrespective of the citizenship of the parties. As we had occasion to observe in *City Railway Co.* v. *Citizens' Street Railway Co.*, 166 U. S., 557, 'Whether the State had or had not impaired the obligation of this contract was not a question which could properly be passed upon or a motion to dismiss, *so long as the complainant claimed in its bill* that it had that effect, and such claim was apparently made in good faith, and was not a frivolous one.' "

In the case just quoted from, *City Railway Co.* v. *Citizens' Street Railroad Co.*, 166 U. S., 558, the bill was filed in the Circuit Court alleging that the complainant had a contract with the city of Indianapolis, which gave it the exclusive right to operate its railway in that city. It was alleged that the Legislature of the State of Indiana afterwards passed a law applicable to all cities of the State of a certain class, authorizing said cities to grant franchises for the street railways and other public utilities. It was alleged that, under the color of this legislative authority, the city of Indianapolis did subsequently pass an ordinance granting certain rights to another street railway company, which violated complainant's rights under its contract with the city. It was insisted that the Federal Court had no jurisdiction. As to this, the Court say:

> "There can be no doubt that the Circuit Court had jurisdiction of the case, notwithstanding the fact that both parties are corporations and citizens of the State of Indiana. It should be borne in mind in this connection that *juris-*

diction depended upon the allegation of the bill, and not upon the facts as they subsequently turned out to be."

And again:

"All that is necessary to establish the jurisdiction of the Court is to show that the complainant had, *or claimed in good faith to have,* a contract with the city which the latter had attempted to impair."

And again:

"That the city did attempt to impair this contract by the agreement of April 24th, 1893, with the City Railway Company, and its ordinance ratifying the same, is equally clear. This contract was entered into *in pursuance of a supposed right* given by the Act of the General Assembly of March 9th, 1891, known as the city charter, the 59th section of which enacted that 'the board of public works shall have power . . . to authorize and to empower by contract, telephone, telegraph, electric light, gas, water, steam, or street car, or railroad companies to use any street, alley, or other public place in such city; . . . provided, that such company contracts shall, in all cases, be submitted by said board to the council of such city, and approved by them by ordinance before the same shall take effect.' This contract and ordinance of April 24th, 1893, even if otherwise valid, *could not be construed to interfere with the rights of the complainant to occupy the streets of the city under the Act of 1861, and the ordinance of January 18th, 1864, without coming in conflict with the provision of the Constitution which forbids States from enacting laws impairing the obligations of contracts.* Whether the State had or had not impaired the obligation of this contract was not a question which could be properly passed upon, on a motion to dismiss, so long as the complainant claimed in its bill that it had that effect, and such claim was apparently made in good faith, and was not a frivolous one."

In the case of *Bank of Kentucky* v. *Stone,* 88 Fed., 383, decided by the Circuit Court of Appeals for the Sixth Circuit,

the bill was filed by the complainant against the board of valuation and assessment of the State of Kentucky. The bill charged that, under its charter, it had the right to pay certain taxes and none other; but that the defendants, acting under the general assessment law of the State of Kentucky, were seeking to assess the complainant in violation of this charter contract.

Judge Taft, speaking for the Court, said:

> "The bill attacks the validity of the Kentucky revenue law of November 1892, and seeks relief against its enforcement on the ground that in its application to the complainant bank, it violates the clause of the Federal Constitution which forbids a State to pass a law impairing the obligation of a contract. The case is, therefore, one arising under the Constitution of the United States, and as it involves more than two thousand dollars, it is within the jurisdiction of this Court."

In the case of *Union and Planters' Bank of Memphis* v. *City of Memphis,* 111 Fed., 561, the complainant filed a bill in the United States Circuit Court, charging that its charter provided that it should pay an annual tax of one-half of one per cent on each share of its stock, which should be in lieu of all other taxes. The bill also charged that the city of Memphis was seeking to assess its capital stock for city taxes under the general assessment acts of the State, passed in 1897 and 1899.

Judge Lurton, speaking for the Court of Appeals, said:

> "The demurrers which go to the jurisdiction of the Court are not well founded. The jurisdiction does not depend upon the diversity of citizenship, for that does not exist, but upon the federal question arising out of the alleged violation of the obligation of the contract, contained in the charter of the complainant corporation. The bill attacks the constitutionality of the revenue laws of 1897 and 1899, so far as they authorize the imposition of a tax upon a capital stock of the Union and Planters' Bank, as laws impairing the obligation of the charter exemption."

While sustaining the jurisdiction of the Court, it was held that complainant was not entitled to relief, because the act complained of did not, in fact, violate the obligation of complainant's charter.

In the case of *Knoxville Water Co.* v. *City of Knoxville,* 200 U. S., 22, the complainant filed a bill in the Circuit Court seeking to restrain the city of Knoxville from erecting and operating a water power plant, to supply the inhabitants of the city with water. It was alleged that complainant had been given, by the city, an exclusive right to supply the city and its inhabitants with water, and that after the execution of this contract the General Assembly of the State of Tennessee had passed an act authorizing the city to establish a plant of its own, and that, pursuant to the authority thus conferred, the city had passed the necessary ordinance, and was proceeding to establish or purchase a plant of it own.

The Circuit Court dismissed the bill upon demurrer. The case was appealed to this Court. It was insisted that the Court was without jurisdiction.

Mr. Justice Harlan, speaking for the Court, said:

> "Upon the question of the jurisdiction of the Circuit Court to take cognizance of this case, without regard to the citizenship of the parties, but little need to be said. The water company, as we have seen, insists that the agreement of 1882 constituted a contract whereby it acquired, for a given period, an exclusive right, by means of pipes laid in the public ways, and the system of works established for that purpose, to supply water for the use of the city and its inhabitants. It also insisted, as just stated, that the obligation of this contract will be impaired if the city, proceeding under the Acts of the Legislature, and under the ordinance in question, establishes and maintains an independent separate system of waterworks in competition with this water company. *This question having been aptly raised by the company's bill, the case is plainly one arising under the Constitution of the United States.*"

Nevertheless, it was held that the contract set out in the bill was not exclusive, and that the complainant was entitled to no relief.

Adversary counsel cite the case of *Hamilton Gas Light & Coke Co.* v. *City of Hamilton,* 146 U. S., 258. This case presents very much the same question as the case just cited.

Delivering the opinion of the Court, Mr. Justice Harlan said:

> "The plaintiff's first contention is, that there is no statute of Ohio authorizing any city in which there are already gas works in full and complete operation to erect gas works, or to levy a tax for that purpose. If this were conceded, we should feel obliged—the plaintiff and defendant both being corporations of Ohio—to reverse the judgment and remand the cause with directions to dismiss the suit for want of jurisdiction in the Circuit Court. The jurisdiction of that Court can be sustained only upon the theory that the suit is one arising under the Constitution of the United States. But the suit would not be of that character, if regarded as one in which the plaintiff merely sought protection against the violation of the alleged contract by an ordinance to which the State has not in any form given, *or attempted to give, the force of law.* A municipal ordinance, not passed under *supposed legislative authority,* can not be regarded as a law of the State within the meaning of the constitutional prohibition against State laws impairing the obligations of contracts."

And again:

> "We sustain the jurisdiction of the Circuit Court because it appears that the defendant grounded its right to enact the ordinance in question, and to maintain and erect gas works of its own, upon that section of the municipal code of Ohio adopted in 1869 (now Section 2486 of the Revised Statutes), providing that the city council of any city of village should have power, whenever it was deemed expedient, and for the public good, to erect gas works at the expense of the corporation, or to purchase gas works

> already erected therein; which section, the plaintiff contends, *if construed as conferring the authority claimed,* impaired the obligation of its contract previously made with the State and the city."

This case clearly shows that the averments in the bill in the case at bar state a case giving the Circuit Court jurisdiction.

Of course, if the taxing officers were proceeding *without any color of legislative authority,* to assess the complainant's property in violation of its charter exemption, this fact would not give the federal court jurisdiction. But complainant's bill distinctly avers that the assessment is attempted to be made by virtue of the power conferred by Chapter 258 of the Asessment Act of 1903, specifically setting out the provisions of this act under which the officers are attempting to assess the property. The assessment itself made by the Trustee recites that it was made by authority of Chapter 258 of the Acts of 1903.

The Attorney General for the State is here insisting, in his brief, that this act, and especially Subsection 5 of Section 5 of the act, expressly confers the right to tax the leasehold interests in this property.

We think it is conclusively settled, by the repeated decisions of this Court, that a federal question arises whenever a contract right is destroyed or impaired by the action of the officers of the State acting under some legislative enactment of the State, or, as stated in the case just cited, when the action is taken *under color of authority* from the legislature of the State.

Nor is it necessary that the Court should determine that the legislation complained of *does impair* the obligation of the contract. The federal question is raised when the complainant's bill alleges, in good faith, that the effect of the legislation is to impair the obligation of the contract.

Appellants' counsel present the jurisdictional question as if complainant's only objection to the Act of 1903 is that Section 32 provides that an assessment against the owner of any interest in land shall be a lien upon the fee. It is insisted that this

section should be so construed as not to create a lein upon the fee, when the fee is exempt from taxation. To this end it is argued that the holding of the Supreme Court of the State in the *Skidmore case* should be read into the act so as to protect the University's title from the lien of assessments made against its lessees. It is also argued that the exemption clause in the Assessment Act of 1903, as construed in the *Cheney case,* is broad enough to protect the *fee* of the University from an assessment against it, and from a lien of an assessment against its lessees. This argument, if correct, can in no event affect the jurisdictional question. The attack made on Section 32, in the bill, is not that it impairs the obligation of compainant's charter contract, but that it authorizes the fastening of a lien on its property, without notice to the University, in violation of the due process clause of the Fourteenth Amendment to the Federal Constitution.

The bill charges that Subsection 5 of Section 5 of the Assessment Act of 1903, which authorizes the assessment of taxes against the tenant for years, changed the law which theretofore existed in Tennessee, and authorized the assessment of taxes against the lessee, instead of the lessor, as had theretofore been done. No exception was made in the statute as to exempt property.

Therefore, while under the law, as it existed at the time the charter was granted, and up to the passage of the Act of 1903, the entire interest in the thousand acres owned by the University has been exempt from taxation. Subsection 5 of Section 5 of the Act of 1903, impaired this exemption by providing for the assessment of taxes against the lessee on his interest in the property and his interest in the buildings thereon. It was charged that this lessened the value of the property to the University—decreased its rental value and was an indirect tax against and burden on the University. The Attorney General and his associate counsel agree with us as to the construction of Subsection 5 of Section 5, of the Act of 1903, and they insisted in their answer, *and insist in this Court, that this section does authorize the assessment of taxes against the lessees of the University.* They deny, however, that this is an indirect tax

on the University, and a burden on the University, or that it impairs the charter exemption of the University.

Of course, it is conceded that if Subsection 5 of Section 5, of the Act of 1903, does impair the University's charter exemption—in other words, if the assessment of taxes against the lessees of the University of the South is a burden upon the University, which violates its charter exemption from taxation, then a federal question arises, because it necessarily results that this law of the State impairs the obligation of complainant's charter contract. On the other hand, if the assessment against the lessees is not a burden on the University and *does not* impair or violate its charter exemption, complainant is entitled to no relief. Hence, if complainant is entitled to any relief on the merits, the federal question necessarily exists.

The taxing officers of Tennessee have attempted to assess this property, claiming the right to do so under the Assessment Act of 1903. The Attorney General of Tennessee, representing the State, is here strongly insisting that this act of the General Assembly of Tennessee authorizes the assessment of this property. We concede that the statute, upon its face, authorizes the assessment. The only question is, does this assessment violate the charter contract made by the State of Tennessee with the University that its property should be free from taxation?

Again it is argued that if we are right in our insistence, that an assessment against the lessees of the University is a burden on it, and impairs its charter rights, then the Act of 1903, which authorizes this assessment, is void, because it is in conflict with the Constitution of Tennessee, which forbids the passing of any law impairing the obligation of a contract. It is insisted that this act is not a law if it is in conflict with the State Constitution, and therefore the federal court has no jurisdiction.

Probably most of the States in the Union have similar provisions in their State Constitutions. If appellants are right in this insistence no suit could ever be brought in a federal court to protect rights violated by State legislation. The answer could always be that if an act impairs the obligation of the contract,

and is in violation of the Federal Constitution, it also violates the same provision in the State Constitution, and is not a law of the State. In this way citizens would be absolutely without the right of applying to the federal courts for protection of their rights guaranteed by the Constitution of the United States.

In the case of *Citizens' Street Railway Co.* v. *City Railway Co.*, 56 Fed., 746, a statement of which has already been referred to, as reported on appeal in this Court, the same insistence was made in the Circuit Court, that we are now replying to, to which the Court said:

> "It is contended that the constitutional guaranty which prohibits a State from passing any law impairing the obligation of contracts must be read into the State statute, and, thus read, the statute would not confer any authority on the city to make the contract and enact the ordinance in question, and, therefore, no federal question would be involved. If such concession were granted, it is argued that no law of the State, however clearly it might impair the obligation of contracts, would present federal question, because the bane and antidote would go together. If the constitutional prohibition was read into the State law, the federal question would still remain. The federal question in all such cases is, does the statute of the State, or a grant made by a municipality thereunder, when fairly construed and treating it as otherwise valid, present a case falling within the probition of the constitutional guaranty in questi n?"

When that case reached this Court this insistence was, presumably, abandoned, or at least it was not even mentioned in the opinion of this Court, sustaining the jurisdiction of the Court.

This provision was in the Constitution of Tennessee when the case of the *Union and Planters' Bank* v. *the City of Memphis, supra,* was before the Circuit Court of Appeals, involving a statute of Tennessee which it was claimed was passed in violation of the charter contract in controversy in that case, and

the jurisdiction of the Circuit Court was sustained because of this allegation.

This Court sustained the jurisdiction of the Circuit Court in the case of *Knoxville Water Co.* v. *the City of Knoxville, supra,* in which the distinguished Attorney General of Tennessee, who is now making this argument on behalf of the State, insisted that a statute or Tennessee violated the contract rights of the complainant in that cause.

So that this provision of the Constitution of Tennessee has not heretofore prevented this Court, and other federal courts, from sustaining the jurisdiction of a Circuit Court, when it has been alleged by the complainant that statutes of the State of Tennesse have violated contract rights.

Manifestly, a federal question arises when it is alleged that some statute passed by the lawmaking body of a State, or city ordinance passed under color of authority from some such statute, violates the complainant's contract rights. If appellants' insistence is correct that no federal question exists, unless the act complained of is a law in the sense that it is a valid, constitutional law of the State, then no such federal question could ever arise, because no statute is a valid law of a State which violates either the State or the Federal Constitution, and a law impairing the obligation of a contract always violates the Federal Constitution, and is, hence, no valid law of the State, regardless of such a provision in the State Constitution. Necessarily, the federal question arises when it is insisted that a statute does violate this provision of the Federal Constitution *and it is this allegation* that gives the Court jurisdiction.

Equity—Jurisdiction.

In the demurrer appellants insisted that the Circuit Court, sitting as a court of equity, had no jurisdiction because no ground of equity was shown, and because there was a remedy at law.

We assume the distinguished counsel have, upon investigation of the authorities, abandoned this position, as they have made no such argument in their brief. The authorities are clear on this point.

In the case of *Union and Planters' Bank* v. *City of Memphis, supra,* Judge Lurton, speaking for the Court of Appeals, said:

> "There must exist some equitable ground for relief besides the mere illegality of the tax. If it appears that the tax constitutes a cloud upon the title of the complainant, or that he will be subjected to irremediable damage or to a multiplicity of suits if compelled to rely upon his legal remedy alone, equity will interpose upon the ground of the inadequacy of the remedy at law."

And in the case of *Taylor* v. *L. & N. R. R.,* 88 Fed Rep., 350, the Circuit Court of Appeals sustained the Court's equity jurisdiction to prevent a multiplicity of suits, and also because the illegal tax complained of would create a cloud upon complainant's title.

Among other things, it was said:

> "The ordinary rule is that statutory remedies at law furnished by a State in its own courts will not oust the equitable jurisdiction of the Federal Courts of equity. This has been laid down with emphatic clearness by Mr. Justice Harlan, speaking for the Supreme Court, in *Smythe* v. *Ames,* 169 U. S., 466, 516, 18 Sup. Ct., 418. In that case it was argued that equitable jurisdiction to enjoin the action of a State railroad commission from putting into force an order fixing confiscatory railroad freight rates was prevented by the circumstance that the State had furnished a special remedy at law in the State Supreme Court for the revision of any unreasonable action by the commission. The argument was not successful. Mr. Justice Harlan said: 'One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that Court, and he can not be de-

> prived of that right by reason of his being allowed to sue at law in a State Court on the same cause of action.' "

In this case the University alleges that this illegal tax will create a cloud upon its title by virtue of that provision of the act making the assessment against the lessees a lein upon the fee of the lessor. It would also confessedly create a cloud upon the title and be a lein upon the leasehold interest of the lessees, and if the tax is illegal and creates a cloud upon the title of the lessees, and this was a burden upon the University, and reduced its rents therefrom, it would give the University a right to the injunction on this ground alone. Confessedly the University would have a right to an injunction in order to prevent a multiplicity of suits, because, as shown in the bill, there is something near 160 different assessments, and if it had any remedy at all, which it has not, not being a party to the assessment, it would require 160 suits on the part of the University to remove this cloud and be relieved from this illegal tax, and, of course, it requires no argument to show that a court of equity has jurisdiction in such a case.

A court of equity would have jurisdiction because it is a suit to protect the exemption against a multiplicity of suits; that is to say, the continued and repeated attempt to tax the property. As said by Judge Lurton, in the case of *Union and Planters' Bank of Memphis* v. *City of Memphis, supra*

> "This case made by the bill is not the case of an objection to a single or particular assessment. The complainant sets up a claim of complete exemption, not only against the particular assessment, but against all future efforts to assess its capital stock."

He quoted with approval from Chief Justice Marshall, in the case of *Osborn* v. *United States Bank*, 9 Wheaton, 738, as follows:

> "The single act of levying the tax, in the first instance, is the cause of an action at law; but that affords a remedy only for the single act, and is not equal to the remedy in

chancery, which prevents its repetition and protects the privileges."

To the some effect is the holding of the Court in the case of *Bank of Kentucky* v. *Stone, supra,* where the Court said:

> "The complainant is seeking to enforce a privilege or exemption which it avers has already been established by the decision of the highest courts of the State. To how much more litigation is it to be subjected? Can it not have a remedy in equity against future attempts to invade the privileges already decided to belong to it?

THE BILL IN THIS CASE DOES NOT ENJOIN A SUIT IN A STATE COURT.

Appellants insist that the injunction granted by the Circuit Court in this cause enjoins a suit in the State Court, in violation of Section 720 of the Revised Statutes of the United States.

To sustain this argument it is insisted that the Trustee, D. S. Osborn, who was attempting to make the assessment complained of, was a Court, and that the proceeding to assess and back-assess this property was a suit, within the meaning of said statute. This insistence can not be maintained.

Under the laws of Tennessee, each county has a Trustee, who is the treasurer of the county, and an *ex officio* tax collector. Under the Assessment Act of 1903, he was given authority to assess property that had been entirely omitted by the tax assessor, and to reassess and back-assess property that had been inadequately assessed. Section 31 of said act provides that when property is assessed at less than its value, either the County Court Clerk or the Trustee may issue a notice to the owner thereof to appear before the Trustee, upon day named in notice, and show cause, if any, why said property should not

be back-assessed or reassessed at its actual cash value. Said Trustee is authorized by this section to send for witnesses, and to take such steps as he may think proper to obtain information and evidence as to the value of the property, but he is not made a Court under this section. He is merely authorized to take these steps for ascertaining the actual value of property that has been inadequately assessed, and when assessed, it is provided that it shall be entered upon the assessment books as if it had been originally assessed. The result of his action is nothing more than any other assessment. But this is not the section under which the property in controversy is sought to be assessed, because this property was not inadequately assessed, *but was entirely omitted from assessment.*

Section 39, of the same act, provides as follows:

> "That should the property in any district or ward, or any part thereof, escape assessment, or fail in any manner to be assessed, the Trustee is hereby required to assess the same at its actual cash value, and report the amount of the taxes thereon collected to the County Court as 'picked up' taxes, at the same time he reports lists of errors, etc., giving a description of said property, district or ward in which located, and the Clerk of the Court is hereby required to certify a copy of said report to the officer with whom the Trustee, by law, is required to settle; and the Trustee shall account for the same in making final settlements of his various accounts; but no assessment authorized by this section, or by Section 31 of this act shall be made for any other years than for the years in which said assessments shall be made, and for three years preceding same."

This is the only section of the act providing for asesssment of property that has escaped taxation altogether, and by this section the Trustee is made a special tax assessor. When the assessment is made, it is nothing more than an ordinary tax assessment.

It is true that in this case the Trustee gave notice to the various lessees of the University of the South, under the direc-

tion of the State Revenue Agent, defendant Jetton, and they appeared and resisted the assessment of their property. This notice, however, the Trustee was not required by the statute to give, nor were the lessees required to appear and object to the assessment. Under this statute, it is hard to conceive how a tax assessor can be held to be a Court, how his act, in assessing property, can be held to be the determination of a suit in a State Court.

Assuming, however, that this was a proceeding to reassess, or raise the assessment, on property that had been inadequately assessed, still the Trustee in such a case is not a Court, though he may perform *quasi* judicial functions. In the case of *Grundy County* v. *the Tennessee Coal, Iron & Railway Co.*, 94 Tenn., 295, it was insisted that the assessment, by the Trustee, was void, because he acted as a Court in making the assessment, and he was allowed, under the law, a commission on the taxes assessed and collected by him. The Constitution of Tennessee forbids the judges of the State Courts to try any cause in which they have an interest. The Court said:

> "While the assessor, in the discharge of his duty, exercises a *quasi* judicial function, still he is not a judge of the Supreme or inferior Court in the sense of the constitutional provision, and that provision can not be held to apply to such an officer."

The Federal Courts have so often held that where the jurisdictional grounds exist they have the power to enjoin State officers from making illegal levies of taxes, and to enjoin State boards of equalizers from proceeding to enforce illegal assessments, and, indeed, to enjoin all manner of proceedings before special tribunals, that we deem it unnecessary to cite authorities on this proposition.

Counsel for appellants cite the holding of the Supreme Court of Tennessee, in *Briscoe* v. *McMillin*, 117 Tenn., 115, where it is held that the State board of equalization exercise *quasi* judicial powers and is a *quasi* Court. Yet the Federal Courts have more than once enjoined proceedings before this board, as shown by Tennessee cases hereinbefore cited.

The right to enjoin an assessment made by the State board of equalization of Tennessee, and to restrain said board from proceeding with an assessment, was sustained in the case of *N., C. & St. L. Ry.* v. *Taylor et al.*, 86 Fed., 168; *Taylor* v. *L. & N. R. R., supra; Taylor* v. *L. & N. R. R.*, 172 U. S., 647. In the case of *Bank of Kentucky* v. *Stone, supra,* the State board of equalizers and assessors were enjoined from proceeding with an assessment, though that tribunal had vastly more judicial power than the Trustee in this case.

In the cause of *Illinois Central R. R.* v. *Adams, supra,* this Court sustained the right of the Circuit Court to restrain the State railway commission of the State of Mississippi from approving and certifying an assessment for taxes against a railroad. The State Revenue Agent was also enjoined from beginning or advising the bringing of suits against said railway company.

In the case of *Smythe* v. *Ames,* 169 U. S., 466, this Court sustained an injunction issued to restrain the railway commission of the State of Nebraska from hearing and determining complaints against certain railway companies, on account of acts done by them, which were forbidden by a statute passed by the General Assembly of the State of Nebraska, the validity of which was attacked in the bill.

The very question was before this Court in the case of *Mississippi Railway Commission* v. *the Illinois Central Railway Co.,* 203 U. S., 335. It was insisted that an injunction could not be maintained to restrain proceedings before said railway commission, because it was a State Court within the meaning of Section 720 of the United States Revised Statutes. This commission had the power to hear and determine certain questions affecting the rights of railway companies. Mr. Justice Peckham, speaking for the Court, says:

> "It is also objected that an injunction will not lie from a United States Court to stay proceedings in a State Court because of the provisions of Section 720, United States Revised Statutes. The commission is, however, not a

Court, and is a mere administrative agency of the State, as held by the Mississippi Supreme Court. *Western Union Telegraph Co.* v. *Mississippi Railroad Commission,* 74 Miss., 80."

In the case cited the Supreme Court of Mississippi held that the duties of the commission were *quasi* judicial, but it was an administrative agency, and not a Court.

Certainly the appellant trustee is nothing more than a part of the tax machinery for the purpose of assessing and collecting taxes — one of the administrative agencies for the State of Tennessee, and Franklin County.

This act (Section 720) was passed March 2d, 1793. At that time the Removal Act of 1789 was in force, authorizing the removal of causes from any State Court to the Circuit Courts of the United States where the suits were between citizens of different States, and in certain other cases. While it was provided that injunctions should not issue from the Federal Courts to restrain suits in the State Courts, yet, in proper cases, suits might be removed from the State Courts to the Federal Courts under the Removal Act. Hence, nonresidents had the right to transfer litigation from the State Courts to the Federal Court, not by injunction, but by removal. Evidently the "State Court" referred to in these two acts meant the same character of Court.

It has been frequently held that the State Court referred to in the Removal Act applied to the regularly organized Courts of the States, and not to such tribunals and boards that exercised special judicial functions.

For instance, if the Trustee was a State Court within the meaning of these acts, nonresidents would have a right to removed proceedings to back-assess their property to the Federal Court by petition. Of course, this could not be done.

In the case of *Mississippi and Rum River Boom Co.* v. *Patterson*, 98 U. S., 403, it was held that commissioners appointed to determine and report on the valuation of property in a con-

demnation proceeding were not a Court, and proceedings before them could not be removed to the Federal Court.

In the case of *Union Pacific Railway Co.* v. *Myers*, 115 U. S., 1, it was held that a condemnation proceeding, tried, under the law, before a mayor and a jury, from whose judgment an appeal was taken to the District Court of the State, might be removed, while pending on appeal in the District Court, because the mayor and jury before whom the case was first tried did not constitute a Court within the meaning of the Removal Act.

See also *Clinton* v. *Missouri Pacific Ry.*, 122 U. S., 469.

THE ASSESSMENT AGAINST THE LESSEES IS A BURDEN ON THE UNIVERSITY, AND VIOLATES ITS EXEMPTION CONTRACT.

When we remember the circumstances under which this charter exemption was granted by the State of Tennessee to the University of the South, the injustice of attempting to burden its thousand-acre reservation with taxes, either directly or indirectly, is very apparent.

The organization of this University was a popular movement, throughout the Southern States, in which the people generally took great interest. The history of this movement is correctly set out in the bill to which reference has been made, and more in detail by Major Fairbanks in his deposition. (Rec., pp. 81 to 117.) There was great rivalry between many localities in the various Southern States with reference to the location of this University, and great inducements were offered by the several cities located in other States. (Rec., p. 87.) The inducement offered by the State of Tennessee was that specially set forth in Section 10 of the charter. The two things embodied in this section of the charter that appealed most strongly to the committee, and which caused Sewanee to be selected as the site of this University were these: (1) They desired the

University to be located at some point far removed from the evils and temptations of city life, where the officers of the University could be in control of its surroundings; where they could keep the student body free from contact and communication with objectionable people, and contaminating influences. This purpose is set forth in this section of the charter, wherein it is recited:

> "That said University may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution and the students thereof from the intrusion of evil-minded persons who may settle near said institution."

(2) It was, of course, greatly desired that this University, and as much of its property as possible, be exempt from taxation. And this inducement was held out by the State and accepted by the University as shown in the latter part of that section, as follows:

> "One thousand acres of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said University."

We think we can demonstrate that the Assessment Act of 1903, of which we complain in this cause, violates this contract and impairs this obligation, with reference to both of the inducements thus offered by the State of Tennessee to the University, and as a result of which the University was located in Tennessee.

At the time this charter was granted, and until the passage of the Act of 1903 complained of, the common law rule that taxes on leased property should be assessed to the lessor, prevailed in Tennessee. This rule is well established. *Taylor, on Landlord and Tenant, Section* 341.

The question was recently passed on in Tennessee in the case of *East Tennessee, Virginia & Georgia Railway Co.* v. *The Mayor, etc., of Morristown,* 35 Southwestern Rep., 771, decided

by the Court of Chancery Appeals, and affirmed by the Supreme Court of Tennessee. It appeared that certain property in Morristown owned by the railway company had been leased to one King for ninety-nine years, with a provision in the lease that at the end of that period the buildings might be removed by the lessee. The authorities assessed the entire property, including the buildings, to the railway. The railway company filed a bill in the State Court to enjoin the assessment. The lessee, King, was made a defendant also, and it was charged that he, the lessee, was liable for these taxes. The Court, speaking through Mr. Justice Neal, who is now a member of the Supreme Court of the State, said:

> "As between the lessor and lessee where the lease contains no covenant for the payment of taxes, the lessor must bear the burden of taxes on the leased estate."

And again:

> "The said land in question was still taxable to the complainant railway company. For the purpose of taxation it was the owner, just as the life tenant is, for the same purpose, owner of the property in which he holds such estate."

The Court held, however, that the buildings, being removable by contract, and hence personal property, should have been assessed to the lessee. Continuing, the Court said:

> "Inasmuch as the assessment included property for which the railway company was not justly taxable, the buildings and structures, and as the value thereof in the assessment as made, is inextricably mingled with the value of the leasehold estate, and also *because the leasehold estate should not have been taxed as a distinct item of property, but should have been included in the general assessment of the land itself against the lessor, railway company, the assessment is void.*"

Thus, when this exemption was granted, the leasehold interests were assessable *as a part of the whole estate* to the Uni-

versity, as lessor, and was a part of the estate exempted from taxation by this charter.

In the case of the *University* v. *Skidmore, supra*, it was insisted, by the attorneys for the State, that because the University had leased this property to various tenants it had thereby parted with its exemption, and the property should be assessed for taxes. In that case no attempt was made to assess the lessees, because there was no statute in Tennessee permitting an assessment against the tenant, and the lessor was liable for taxes on the leasehold estate. Yet the question as to whether the leased property was assessable for taxes was directly involved; the only difference between that case and this being that in that case the attempt was made to assess the lessor with the taxes, and in this case the attempt is to assess the lessee with taxes on the same property. The Supreme Court of Tennessee, in that case, said:

> "Under the tenth section of this charter, as quoted, the exemption is not made to depend upon the use to which the land might be put, but relates to the *title*—'so long as such land *belongs* to said University.' The attention of the Legislature was called to the fact that the State might at some time resume the right to tax this property, and it stipulated that this right should be resumed, not upon the condition that the University *rented or leased* the property, or made any other lawful use of it, but upon the condition the University parted with its title. The Legislature conceived, it is evident, that this property might be owned by the University, and that such ownership would not be an act outside of the purposes and objects of the corporation, and made no limitation upon its use. It is the legal and moral duty of this corporation to so use the property, and all other assets belonging to it, as to best promote the ends and purposes for which it was created; and if by leasing it an income to the University can be created, and by this income it is enabled to extend its usefulness, it is the right and *duty* of this corporation to do so. By this means the property is made to contribute directly to the support of the institution, and subserve the great public purposes for

which it was created, and which the Constitution of the State enjoins upon the Legislature at all times to foster and 'cherish.' It would be hard to conceive to what uses, other than leasing or renting it to select persons, where business, trades, or occupations would be directly or remotely auxiliary to the necessities or convenience of the University and its inmates and officers, the corporation could put this one thousand acres of land which the Legislature authorized it to hold. The power to hold the ten thousand acres was to enable the corporation to keep 'evil-minded persons' at a long distance from the University, and from contact with the young men and youths attending it. The ownership of ten thousand acres, with the University located near the center of the tract, would make it the 'master of the situation' as respects that class of persons whose presence or proximity was not desirable."

Here it was decided that the *property* is exempt from taxation so long as the title remained in the University of the South.

Can the State violate this contract and tax this exempt property by simply passing a statute changing the *method* of assessment?

In the case of *State of New Jersey* v. *Wilson*, 7th Cranch, 164, the Colony of New Jersey had contracted, in a treaty with the Delaware Indians, that certain land in that State should be exempted from taxation. The Indians afterwards, with the consent of the State, sold these lands. The State thereupon attempted to assess the purchasers with taxes. This Court held this could not be done, Chief Justice Marshall, delivering the opinion of the Court, said:

"Every requisite to the formation of a contract is found in the proceedings between the then Colony of New Jersey and the Indians. The subject was a purchase on the part of the government of extensive claims of the Indians, the extinguishment of which would quiet the title to a large portion of the province. A proposition to this effect was

made, the terms stipulated, the consideration agreed upon, which is a tract of land with the privilege of exemption from taxation; and then, in consideration of the arrangement previously made, one of which this act of assembly is stated to be, the Indians execute their deed of cession. This is certainly a contract clothed in forms of unusual solemnity. The privilege, though for the benefit of the Indians, is annexed, by the terms which create it, to the land itself, not to their persons. It is for their advantage that it should be annexed to the land, because, in the event of a sale, on which alone the question could become material, the value would be enchanced by it."

Here it was held that the exemption attached to the property and passed to the purchaser. In the case at bar it has been held that the exemption attached to the property so long as the title remains in the University, and that leasing the property does not take the title out of the University so as to destroy the exemption. In the New Jersey case cited, it was said that the exemption was for the benefit of the Indians. In that sense, it was a personal exemption to them, and, as stated, it enhanced the value of the property in case of a sale. In the case at bar appellants insist that the exemption is personal to the University. The exemption was for the benefit of the University, but it attaches to its property for a period definitely fixed in the charter, that is to say, so long as the title remains in the University. The exemption is for the benefit of the University, and, as the record shows, materially *enhances the value* of its property in leasing same. It is this *value* that the act we are complaining of destroys.

Dr. B. L. Wiggins, the Vice Chancellor of the University, in his testimony, fully explains the value of this exemption from taxation in leasing the property. He testified as follows:

"Q. State whether or not the fact that this property is exempt from taxation is taken into consideration in fixing the amount of rent when the leases to your tenants are executed?

"A. Yes, and from the very foundation of the University the exemption from taxation has always been regarded

as a valuable asset. In the annual catalogue and announcements, and other publications, for many years, the University has used the following expression which I now quote from the 'Catalogue of Announcements' for 1906-1907, page 32, which same expression is to be found in the catalogue for previous years: 'Building lots are leased at reasonable prices for a long term of years to suitable persons. *Inasmuch as the entire one thousand acres of reserve, with all improvements, is exempt from taxation, lessees secure valuable privileges for a nominal sum.*' It will thus be seen that the University has always, in fixing the rent, taken into consideration that the improvements attached to the freehold and were the property of the University, and that the tenant was to enjoy only a limited use of such improvements. The University stipulates in the several leases a sum representing the minimum value of such improvements, in some cases more, in some cases less, according to the location of the lot.

"Q. It if should be held that the tenants are taxable under the proceedings which we have enjoined in this case, I will ask what would the effect on the rates of the University be?

"A. It would materially depreciate the rental value, and would act as a deterrent to prospective leaseholders." (Rec., pp. 162, 163.)

It was insisted, however, by appellants' counsel in arguing this case before the Circuit Court, that, notwithstanding the fact that this exemption was taken into consideration in fixing the amount of rent to be paid by the University's lessees, and that they contracted upon a basis of immunity from taxation; nevertheless, as the contracts were already entered into, the fact that the lessees would have to pay taxes on the property, thus leased, could not reduce the amount of rents, they would have to pay the University, on their said lease contract.

We hereto annex copy of the form of the lease contract between the University and its various tenants. It will be ob-

served that this lease contract provides for two renewals thereof. The terms of the renewals are stated as follows:

> "And at the expiration of the present term, the University of the South shall have the option of taking the premises by paying for all the improvements made thereon, or may renew the lease for another term of ——— years, on such terms as may be agreed upon by the parties respectively, and may also give a second renewal for ——— years; and in case the parties can not agree upon the value of the improvements or the rental to be paid for a new term, the same shall be determined by arbitration; one of the arbiters to be selected by the commissioner of buildings and lands, and the other by the lessee; and, in case they can not agree, they shall call in an umpire; provided, however, that in fixing the rental for the new term, the value of the improvements shall not be taken into account as against the party of the second part. (Rec., pp. 175-6.)

Thus the University is required to enter into a new contract, as to the amount of rent to be paid, at the expiration of each term. Necessarily, if the property is assessable for taxes, as against the lessee, it will not be so valuable to him as when free from taxation. As shown, this immunity from taxation entered into and became a part of the original lease contract, and was one of the things taken into consideration in fixing the annual rent thus contracted for. This element of value in the property of the University is thus destroyed by this act of which we complain.

The Vice Chancellor exhibited a table showing the list of lessees and the amount of annual rents paid by each, together with the number of renewals provided for in each, and date of expiration of each renewal. (Rec., pp. 183 to 190.)

This table shows that as to many of the lessees the first term of these leases have expired, and that there has been but one renewal of the entire number of leases. The remainder of these leases will soon expire. Thus it will be seen that the University is now confronted, in its dealings with its lessees, with the proposition of renewing its leases, on the basis of the

property being assessable for taxes against the lessees, instead of free from taxation, as when the original lease contracts were entered into. So that necessarily this burden of taxation falls now, directly and immediately, upon the University.

But, it is said, these lease contracts provide that the lessees shall pay all taxes and assessments on the property leased. It is true this provision is contained in the lease contract, but this is fully explained by the Vice Chancellor as follows:

> "Q. I notice in the copy of the lease filed in the case of the University of the South and A. J. Skidmore, a provision for the lessee to pay taxes and assessments. Please explain the meaning of this provision?
>
> "A. An explanation was given by Major George R. Fairbanks in his deposition in the case of the *University of the South* v. *A. J. Skidmore, Trustee*, 1887. That explanation is the correct one, to wit: that the amended charter, 1869, authorized the University to establish police and municipal regulations. Acting under this provision, the University at one time did proceed to levy a tax upon the leaseholders for the maintenance of roads, etc. The phrase in the lease, 'Taxes and assessments,' had reference to such *municipal taxes*, and not to taxes levied under the authority of State and county. The question may naturally be asked why, in reprinting the lease forms, the phrase was allowed to remain, to which I would answer that leasehold improvements outside of the one thousand-acre reservation have always been considered subject to taxation, and, as a matter of fact, taxes have always been paid upon such leasehold improvements. The phrase, 'Taxes and assessments,' would properly apply to such case, and as the one thousand-acre reservation is only about one-eighth of the University domain, and the number of leasehold improvements on this 'outside' domain will continue to increase, it is well that the form of the lease should remain unchanged." (Rec., pp. 161-2.)

This explanation is obviously correct, because, as heretofore shown, none of the lessees contemplated that they would have

to pay any taxes, and the University held out to them in its catalogue, as an inducement to lease the property, that it was free from taxation.

Necessarily, this provision did mean only local or municipal taxes, because the law of the State, entering into all contracts made by the parties, expressly provided, as set forth in the charter of the University, that the property should not be assessable for State and county taxes, and at the time these contracts were entered into the taxes could only be assessed under the laws of the State, against the lessor.

Thus it will be seen that this tax against the lessee is a tax on the right to occupy the land. As stated by the learned judge delivering the opinion in the *Skidmore case,* "It would be hard to conceive to what use, other than leasing it or renting it to select persons," this property could be put. Hence, in taxing the property when leased, or in taxing the interest leased, a tax is placed upon the only use to which the property can possibly be put, to be made of value to the University. The State insists that, while it may not tax the property directly, it may, nevertheless, tax its use or right of occupancy; while it may not tax the land, it may, nevertheless, tax the rent or income from the land, and thus burden its only value to the University.

In the case of *Pollock* v. *Farmers' Loan & Trust Company,* 157 U. S., 427,—the *Income Tax Cases,*—this Court held that a tax on the rent, or income, from land was a direct tax on the property itself. Among other things, Mr. Chief Justice Fuller said:

> "The name of the tax is unimportant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income incident to its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value, or annual user, of real estate appears to us the same in substance as an annual tax upon the real estate which would be paid out of the rent or income."

In the case of *Dougherty* v. *Thompson,* 71 Texas, 202, the Supreme Court say:

> "County school lands, when leased to raise an available school fund, are as exclusively devoted to the benefit of the public as if covered with schoolhouses; and the Constitution forbids the taxation of *means* through which said lands may be made to yield a revenue, without sale, as fully as it forbids the taxation of the land. Forbidding the taxation of the land, it forbids the taxation of an estate less than the fee, whether imposed on the County or its lessee."

In the case of *Moseley* v. *State,* 115 *Tennessee,* 52, the Supreme Court of Tennessee recently held that the income derived from United States bonds was not assessable for taxes when collected, on the principle that the bond itself being exempt from taxation, the income derived therefrom was likewise exempt.

Authorities are cited by counsel for appellant, in their brief, which they insist sustain their right to assess this property. It will be observed, however, that in none of these cases were the parties, resisting assessment of taxes, protected by an exemption contract such as this. In none of these cases was it shown that the assessment of the tax *impaired an exemption contract.*

In the case of *San Francisco* v. *McGinn,* 67 *California,* 110, a lessee insisted that his property was exempt, because it was leased from the city and county. It was held that, under the Code of California, the lessee was the owner for purposes of taxation. That was merely a matter of construction of a State statute and not an invasion of a contract exemption from taxation. The county and city, being arms of the State government, were immune from taxation. But the county and city were not complaining of an attempt to violate their exemption; on the contrary, they were the beneficiaries of the assessment.

So in the *Gaines* case, cited in appellants' brief, it was held by the Supreme Court of Arkansas that the lessee's improvements were assessable for taxes under the statutes of that State. The land was leased from the United States. It was not shown that the United States government had any interest whatever in these improvements, nor that its rights were in any way affected by the assessments; nor was the government complaining of the assessment; on the contrary, the government conceded the right of the State to tax the lessee's improvements.

And so in the case of *State* v. *Tucker,* 38 *Nebraska,* 56, cited by adversary counsel. The United States government, being the owner of the fee in the property, was exempt from taxation. But the government did not object to the assessment made, nor was it shown that the assessment did or could affect the rights of the government in the slightest.

The case of *Luttrell* v. *Knox County,* 89 *Tennessee,* 257, is also referred to to sustain appellants' insistence. In that case Luttrell built a bridge upon piers owned by Knox County under an indefinite lease from the County. He insisted that he could not legally be assessed for taxes because the county owned the piers, and the property was therefore exempt from taxation. By a divided Court (Judges Lurton and Snodgrass dissenting) it was held that the lessee was properly assessable for taxes on the superstructure. It was stated by the Court that Luttrell, the lessee, was not exempt from taxes under any contract, and hence he was in no way protected from paying taxes on property owned by him. There was no question in this case of the violation of any contract of exemption. Knox County was exempt from taxation because it was an arm of the government, but it did not claim to be injured by the assessment of the property; on the contrary, it was one of the beneficiaries of the assessment.

In the case of *Russell* v. *the City of New Haven,* 51 *Conn.,* 259, no attempt was made to assess the leasehold interest of the lessee, but only the improvements put upon the property by him. It was held by the Court that, under the contract, the title to the improvements was in the lessee. The lessor made

no objection to the assessment, nor was it pretended that the assessment in any way injured the lessor, or impaired the rights of the beneficiary of the exemption contract.

In the case of *Parker*, v. *Redfield*, 10 *Conn.*, 490, the lessee of exempt property was held liable for taxes on buildings placed on the property by him under a contract which gave him the right to remove his improvements. The rights of the lessor were not in any way affected, nor his exemption impaired by the assessment. The Court say:

> "In this view of the case, it is difficult to see why this building, any more than other personal estate of the lessee, should be exempted from taxation. And it is equally difficult to see what contract exists, the obligation of which is impaired, by taxing this property. It is in vain to say, that any contract with the *Episcopal* society is thus either violated or impaired. The contract between them and the government was, that *the land*, granted by the conveyance of 1765, should be forever exempted from taxation. And it has been exempted. Does this exemption extend to personal property, placed upon the premises by another; which the society do not own, from which they derive no rent, and over which they have no control? Has the plaintiff any ground of complaint? He derives no title to this building from the *Episcopal* society. As to that, he is not their lessee. The case finds, that he is the owner, having purchased it of a former owner; and that it has always been subject to taxation."

Appellants also quote from *Cooley on Taxation*, to the effect, that where the land is owned by one person, and the buildings thereon by another, the buildi[illegible] may be assessed for taxation, although the land be exempt. The same principle was announced in the case of *People* v. *Board of Assessors*, 93 N. Y., cited by counsel.

This is, of course, true, and it is in substance the holding of all the cases cited by appellants. In order to bring their case within the principle announced by the authorities, cited in their brief, appellants must show that the lessees owned the build-

ings erected upon the leased property. This would only give them a right to assess the buildings as separate personal property. It does not sustain their insistence that they have a right to assess the *leasehold interest* of the lessee, in the real estate, which they have attempted to do in this case; nor would it affect the validity of the Assessment Act, under which they are seeking to assess the leasehold interest in this exempt property.

There is no basis, however, for the insistence that the lessees own these buildings. The University owns the buildings. All the lessees have, is a right of occupancy, for a limited period. Among other provisions in the lease, it is agreed that the lessee is to put a certain amount of improvement on the property. At the expiration of the first term, the University has the option of taking possession of the premises by paying for all the improvements, or the renewal of the lease for another term. *At the expiration of the last renewal the University owns the improvements without paying anything.*

It is insisted, by appellants, that the provision in the lease, binding the University to pay for the improvements, if it elects to terminate the lease and take possession, at the end of the first or second term, makes the said improvements the personal property of the lessee until the University shall so elect to pay for the improvements and take possession thereof.

This is manifestly an incorrect construction of the agreement. The lessee binds himself to put the improvements on the property, and the lessor binds itself to pay for the improvements under certain conditions. The stipulation to make the improvements on the property is for the benefit of the lessor; the stipulation to pay for the improvements is for the benefit of the lessee. In its last analysis, it is nothing more nor less than an agreement, between the owner of the real estate and his tenant, for the tenant to put improvements on the owner's property, for which the owner is to pay. This contract no more gives the lessee title to the improvements than it would give a stranger, with whom the University contracted to improve its real estate, the title, to the improvements put upon the property by him, under contract.

In the case of *Kutter* v. *Smith*, 69 U. S., 491, Mr. Justice Miller, speaking for this Court, said:

> "There was in the contract of lease between Link and Sherman a covenant that, at the expiration of ten years from the first day of May, 1859, it should be at the election of the lessor to purchase the buildings erected on the leased premises at their appraised value at that time, or renew the lease of said premises for the term of ten years longer, at a rent to be appraised in like manner by disinterested persons; and this election, on the part of the lessor, was to be exercised at the expiration of every ten years for the period of ninety-nine years."

The lessee assigned his lease, and failed to pay the rent, for which reason the lessor took possession, and the lessee's assignee brought suit for the value of the building. As to this insistence, the Court say:

> "It is argued that the plaintiff's assignor became the owner and had title or estate in the building, as separated and distinguished from the land; and while the defendant had the right to enter, take possession, and hold for a failure to pay rent, that right was in some way subordinate to plaintiff's right to the house."

And again:

> "But we cannot concede that plaintiff or his assignor had, at any time, the legal title to the building as distinct from the lot. The well settled rule is, that such erections as this become a part of the land as each stone and brick are added to the structure. The only exceptions to this rule are the class of fixtures already adverted to, and such rights as may grow out of express contracts. The contract before us was not intended to change this rule. The agreement to purchase means nothing more than that, in a certain event, the lessor will pay the lessee the value of such building, but there is no implication of any general title or ownership in the lessee apart from that event."

In *Bass* v. *Metropolitan West Side Railway*, 82 Federal, 857, the lease contract was almost identical with the one we have in this case, except that the provision for the lessor to pay the lessee for the improvements at the expiration of the lease, used the word "purchase." The lessee (Gov. John P. Altgeld) assigned this lease, with the consent of the lessor, to the defendant railroad company. The railroad company attempted the destruction of a part of the improvements; when the lessor filed the original bill to enjoin the destruction. The insistence of the railroad company was that the improvements became the property of the lessee (having been erected by the lessee), but it was held this was not true. The Court said:

> It is also stipulated that, at the end of the term, the owner of the fee shall purchase the building or extend the term of the lease. It is clear, upon the whole instrument, that in no event was the removal, from the premises, of the building, which the lessee undertook to erect and keep in repair, contemplated. On no conceivable contingency can there arise under the contract a right on the part of the lessee to remove the buildings, even were it a physical possibility to do so. In the contemplation of the law the building was intended to be, and accordingly, in the process of construction, it became, a part of the realty."

And again:

> "Though in form the lessor is bound to purchase the building, the evident intention is simply that in one or the other modes prescribed, she shall make compensation for the erection of the structure and for keeping it in repair during the term of the lease."

It will be noticed that in both of the above cited cases the contract provided for the lessor to "purchase" the buildings at the end of the lease, while in our lease contract it is only provided that the lessor is to pay for the improvements.

In the recent case of *Fraer* v. *Washington*, 125 Federal, 280, the Court of Appeals for the Eighth Circuit put the same

construction on a lease contract very similar to ours, and held that the covenant for the lessor to pay the lessee for the improvements did not give the lessee any title to the improvements, but, on the contrary, the improvements became a part of the realty when constructed, and the title and ownership vested in the lessor.

In the case of *The People* v. *Barker,* 153 New York, 98, it was held that a shed erected by a lessee upon a pier leased from the City of New York under a lease requiring its erection, and providing that it was to become the property of the city at the expiration of the lease, became the property of the city immediately upon being erected and affixed to the realty, and it was held that this property was not assessable for taxes.

Neither the University nor its lessees have ever regarded or treated these improvements as belonging to the lessees. In the *Skidmore* case, the State attempted to tax these improvements, as well as the land, on the theory that said improvements belonged to the University. The University did not deny this, nor did it seek to evade liability for taxes on the ground that it did not own the improvements, but based its defense upon its right to an exemption under its charter. The Supreme Court of Tennessee in that case, treated these improvements as the property of the University, and the decision in that case is based on that theory. The Court say:

> "The assessments complained of were made and sought to be made upon the 1,000 acres of real estate and *improvements so rented or leased,* excluding therefrom the University building property and church, but including the houses of the professors. With the exclusion mentioned, the *assessment officers seek to assess this* 1,000 *acres and improvements thereon.*"

Not only was it held in the *Skidmore* case that these buildings were exempt from taxation, as the property of the University of the South, but the charter exemption in express terms provides that the *buildings* on the property shall be exempt from taxation.

In the cross-bill filed by appellant, Franklin County, in the *Skidmore* case, the State and County placed the proper construction on this lease contract in insisting that the buildings of the lessees belong to the University. It was charged:

> "And your orator shows the Court that when a tenant gets a lease for a term of thirty-three years, they erect their own houses thereon, and in addition to the rents received by the University for the lease of the premises, at the expiration of the term of years for which the premises are let, *the whole property, house and all, reverts to the University*, so that at the end of a comparatively short period of time the University will be the absolute and unconditional owner of the next to the largest town in complainant county."
>
> R., p. 38.

It will be observed that there is no provision in the lease for the removal of the buildings by the lessees. The only right given the lessees is *compensation* in case the University elects to take possession before the expiration of the last renewal.

The Assessment Act of 1903 provides, not only for the assessment against the tenant for years on his leasehold interest, and makes same a lien on the fee of the owner, but provides for a sale thereof, if default be made by the lessee in the payment of his taxes. In order to avoid the manifest invalidity of this act, in so far as it authorizes the sale of the fee in exempt property, without any notice to the owner of the fee, appellants insist that it was not intended to fasten a lien on the fee of the exempt property. It is insisted that, under a proper construction of this act, the lien should be limited to the lessee's interest in the property, and that the State would only have a right to sell the lessee's interest for the payment of taxes.

Assuming this construction to be correct, the injury to the University remains the same. If the State is permitted to assess the lessee's interest, and sell same for the payment of taxes, the University's control over this property is lost; and

one of the greatest advantages provided for, in Section 10 of the charter, is destroyed.

The University has retained the title to, and the absolute control over, this one-thousand-acre reservation. In this way it has been able to say who shall come near the University. The leases all provide that they may not be assigned without the consent of the University. But, if the State has the right to sell the property for taxes at public auction, as provided for in this act, the University is absolutely helpless to prevent the intrusion of outsiders. Its power to protect its students from contaminating influences will be gone, and one of the most cherished ideals of the University will have been destroyed.

At the invitation of the State of Tennessee this University was located in a barren wilderness, far removed from the evil influences of city life, so dangerous and so alluring to young men sent from their homes to universities. It has been one of the boasts of this university that it was protected, for all time, from these dangers and evils, provided against in its charter. For this purpose it tried the experiment of establishing a university at a place so remote from any city or town, where it could be in absolute control of its surroundings.

Thus the two things in the charter contract which caused this complainant to be located in Tennessee are violated by this simple provision in the assessment law, changing the common law rule that taxes shall be assessed to the lessor or owner of the fee, and providing that they shall be assessed to the lessee or tenant for years.

Can this contract thus be destroyed by indirection? We again quote from the opinion of Mr. Chief Justice Fuller in the *Income Tax Cases*:

> "If it be true that, by varying the form, the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution."

We have shown that under the law as it existed when this charter was granted, and until the passage, in 1903, of the

act complained of, every interest in this property was exempt from taxation, and this complainant was protected against the burdens from either direct or indirect assessments. Under the law as it existed, all the taxes against the property, whether leased or not, must be assessed against the University. The charter contract undertook to protect the University against such an assessment so long as it owned the property. That rule of the common law entered into and became a part of the contract as fully as if written in it.

We will quote at some length from the opinion of this Court, on this subject, in the cause of *The United States* v. *Quincy*, 71 U. S., 535:

> "It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement. Illustrations of this proposition are found, in the obligation of the debtor to pay interest after the maturity of the debt, where the contract is silent; in the liability of the drawer of a protested bill to pay exchange and damages, and in the right of the drawer and indorser to require proof of demand and notice. These are as much incidents and conditions of the contract as if they rested upon the basis of a distinct agreement. *Green* v. *Biddle*, 8 Wheat, 92; *Bronson* v. *Kinzie*, 1 How., 319; *McCracken* v. *Hayward*, 2 How., 612; *People* v. *Bond*, 10 Cal., 570; *Ogden* v. *Saunders*, 12 Wheat., 231.
>
> "In *Green* v. *Biddle* the subject of laws which affect the remedy was elaborately discussed. The controversy grew out of a compact between the States of Virginia and Kentucky. It was made in contemplation of the separation of the territory of the latter from the former, and its erection into a State, and is contained in an act of the Legislature of Virginia, passed in 1789, whereby it was provided 'that all private rights and interests within' the

District of Kentucky, 'derived from the laws of Virginia prior to such a separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in this State.' By two acts of the Legislature of Kentucky, passed respectively in 1797 and 1812, several new provisions relating to the consequences of a recovery in the action of ejectment—all eminently beneficial to the defendant, and onerous to the plaintiff—were adopted into the laws of the State. So far as they affected the lands covered by the compact, this Court declared them void. It was said: 'It is no answer that the Acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much violation of the compact as if they overturned his rights and interests.'

"In *Bronson* v. *Kinzie*, 1 How., 319, the subject was again fully considered. A mortgage was executed in Illinois containing a power of sale. Subsequently, an act of the Legislature was passed which required mortgaged premises to be sold for not less than two-thirds of their appraised value, and allowed the mortgagor a year after the sale to redeem. It was held that the statute, by thus changing the pre-existing remedies, impaired the obligation of the contract, and was, therefore, void.

"In *McCracken* v. *Hayward*, 2 How., 608, the same principle, upon facts somewhat varied, was again sustained and applied. A statutory provision that personal property should not be sold under execution for less than two-thirds of its appraised value was adjudged, so far as it affected prior contracts, to be void, for the same reason.

"In *Sturges* v. *Crowinshield*, 4 Wheat., 122, the question related to a law discharging the contract. It was held that a State insolvent or bankrupt law was inoperative as to contracts which existed prior to its passage."

And again the Court say:

> "The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden."

The Court also quoted with approval from *Planters' Bank* v. *Sharp,* 6 How., 327, as follows:

> "One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or cause, but of encroaching in any respect, on its obligation—dispensing with any part of its force."

Applying these decisions to the case at bar, we think it will require no argument to show that the exemption contract of the University of the South *is made less valuable* by the passage of this act complained of.

THE SCOPE OF THE DECREE.

It is insisted by appellants that, in any event, the decree is too broad, and that the injunction should be limited to any assessment made under the Act of 1903. So that appellants may be left free to assess the property under the Act of 1907 or any subsequent act.

We agree with adversary counsel, that the effect of this decree is to perpetually restrain any attempt to burden this property with taxes, either directly or indirectly. The decree protects, and should protect, the rights—the immunity from taxation—contracted for in complainant's charter. This is one of the reasons why it was necessary to come into the Federal Court for relief. Under the ruling of the Supreme Court of Tennessee, a decree in a tax case—although it may involve a charter exemption—has no binding force, except as to the taxes actually involved in the litigation. On the contrary, in the Federal Courts such a decree has all the binding force and effect of a decree on any other right involved. The difference

between the rules adopted in the Federal Courts and in the Courts of Tennessee, is fully discussed by Judge Lurton in the case of *Union & Planters' Bank* v. *The City of Memphis,* 111 Federal, 561.

Appellants insist that the Assessment Act of 1907 has so changed the objectionable feature of the Act of 1903 as to make an assessment of the lessee's interest valid. If we are correct in our insistence, that this property should be exempt from assessment, either made directly against the University, or indirectly by assessing the lessees, then there can be no such thing as a valid law burdening this property with taxation. The only change made by the Act of 1907 is that it is no longer provided that the assessment against the lessees shall be a lien on the fee of the owner. The purpose of the State, however, to assess the property through the lessees, and the determination of the General Assembly of the State to pursue that purpose, are made manifest by the Act of 1907. Section 5, part 5, of the Assessment Act of 1907, contains practically the same provision, for the assessment of the lessee's interest, as that contained in Section 5, Subsection 5, Chapter 258, of the Acts of 1903. The only difference is that the Act of 1907 expressly provides that the lessee's interest shall be assessed to him, notwithstanding "the fee, reversion, or remainder thereof is exempt to the owner." Under the Act of 1903, which we are attacking, it is provided that the interest of the tenant for years shall be assessed, and no exception is made in favor of the lessees, of property which is exempt. The Act of 1907 expressly negatives the idea of any such exception. But the two acts mean exactly the same thing, and both show the fixed determination of the General Assembly of Tennessee to burden this property with taxes, unless restrained by this Court. We agree with the conclusion of adversary counsel, as set out on page 67, in their brief in this cause, that the provisions of the Act of 1907 were not necessary to enable the State to tax the interest of the lessees, because that was provided for in the Act of 1903.

These changes, made by the Act of 1907, were evidently made in view of this litigation, and to sustain the insistence

of the Attorney General and his associates—(1) that the State did not intend to fasten a lien upon the *fee* of the University, and (2) that the State did intend, and had a right, to assess the interest of the lessees of the exempt property owned by the University.

As we have hereinbefore shown, the last named object is just as burdensome to the University as the first would be, and just as destructive of its rights. We, therefore, insist that the decree of this Court should be broad enough to forever protect the exemption guaranteed to the complainant University in its charter, from either direct or indirect taxation.

CONCLUSION.

Appellants insist that this exemption, protected to the extent we are insisting upon, gives the complainant an advantage it is not entitled to. It is argued that by the decree of the Circuit Court, the people of an entire town are enabled to avoid their just share of the burden of taxation borne by the citizenship of the State.

As has been shown, the place where the village of Sewanee is now situated was a wilderness. This University was located there at the invitation of the Sate of Tennessee. Attempting to establish a university in the heart of a wilderness, the founders of this institution first met failure in the misfortunes of the great Civil War. Starting again after the close of that conflict, the institution was opened with five students and two professors. Now they have a university equal to any in the Southern States with over forty professors and more than five hundred regular students. (R., p. 160.)

The University has constantly struggled with poverty. Its annual deficit has been more than seven thousand dollars. There is now and has always been a constant struggle to maintain the University and build it up along the lines contemplated by its founders. (R., p. 160.) In doing this, the University has not been able to erect the necessary buildings, to

furnish dormitories for its students, or provide boarding houses for them; nor has it been able to erect other buildings necessary for homes for its professors—homes for its mechanics engaged in erecting school buildings, etc. In order to have these buildings erected for the use and benefit of the University, and to retain control thereof, the University, from the beginning, adopted this method of permitting tenants or lessees to erect buildings, and to permit them to occupy them, for long terms at a small rental, in order that, in the end, the University would become the owner of the buildings, and would have in the meantime, had the benefit of these necessary improvements on the University domain.

The village of Sewanee is strictly a university town. Practically every person there is either directly or indirectly connected with the University, as explained in detail by the testimony of the Vice-Chancellor (R., pp. 157 and 158). Neither this University, however, nor the village owned by it, has ever been a burden to the taxpayers of the State or county. Its property is enclosed by fences and gates provided by the University, and it is required to keep up all the roads and streets in this enclosure. This it does without any expense to the State or county. Besides, the University, and the inhabitants of this village, contribute their part to keeping up the roads on the outside of the University's property by paying road taxes. In addition, they pay fully their proportional part of the personal taxes collected by the county. (R., pp. 158 and 159.)

In all its struggle with poverty, and in building up this splendid institution, in the heart of the State, the complainant University has never received one dollar's donation from either the State of Tennessee or the county of Franklin. It has been supported, fostered and built up by private donations.

On the other hand, the University has given in free tuition to the children of the county and State many thousands of dollars. (R., p. 159.) In this situation we can see no injustice in requiring the officers of the State and County to respect the solemn obligation of the State of Tennessee, and leave this institution free from the burden of taxation, in its splendid

struggle to realize the hopes of its founders, and the thousands of people interested in its success.

Respectfully submitted,

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APPENDIX.

CHARTER OF THE UNIVERSITY OF THE SOUTH

"Whereas, sundry citizens of the State of Tennessee, Alabama, Georgia, North Carolina, South Carolina, Louisiana, Texas, Mississippi, and Florida, contemplate establishing a university, to be located in the State of Tennessee, at a place which shall be conveniently accessible to the citizens of said States, which university is to be under the control and government of the Protestant Episcopal Church, subject to such rules, regulations, and restrictions, as hereinafter set forth:

"And Whereas, the security of society, the supremacy of the law, the preservation of liberty regulated by law, the perpetuity of our institutions and of the Union—all are, at least, dependent upon the prevalence of the people, and sound moral sense among them:

"And Whereas, it is to the interest of the State, and, indeed, of every State, to encourage the erection of Seminaries of Learning; therefore,

"Section 1. *Be it enacted by the General Assembly of the State of Tennessee*, That James H. Otey, David Pise, Francis B. Fogg, John Armfield, Thomas Atkinson, M. Ashley Curtis, Thomas Ruffin, Thomas D. Warren, Thomas F. Davis, Alexander Gregg, J. L. Manning, William Allston Pringle, Stephen Elliott, N. H. Cobbs, Henry C. Clay, C. T. Pollard, L. H. Anderson, William M. Green, W. W. Lord, George S. Yerger, Eugene Hinton, Leonidas Polk, W. T. Leacock, Geo. S. Guion, William M. Mercer, J. W. Dunn, E. B. Nicholds, J. E. Nicholson, Francis M. Rutledge, G. R. Fairbanks, Geo. Whitfield, J. J. Scott, and such other persons or person as may be hereafter appointed trustees of said University, in pursuance of the constitution and by-laws thereof, be, and they and their successors are hereby, constituted a body corporate and politic,

in fact and in name, by the name of 'The University of the South,' and by that name shall have perpetual succession, and a common seal; and shall be capable in law of suing and being sued, and shall have the power to purchase, receive by donation or otherwise, and to possess, hold, alien and dispose of property of all kinds and description, to be held in fee simple or otherwise; subject, nevertheless, to such restrictions and conditions as are contained in this charter.

"SECTION 2. *Be it further enacted*, That said trustees shall have power to assemble at such time and place as may be designated by the President of the Board, for the purpose of organizing said institution and of forming a constitution for the government of said University. A majority of said trustees shall constitute a quorum for such purpose. Said trustees shall have power in and by said constitution to designate how and by whom and in what way the said University shall be governed; and said constitution, when adopted, may be altered or amended in such manner as may be provided for in said constitution. Said Board shall keep a minute of their proceedings.

"SECTION 3. *Be it further enacted*, That said Board shall meet at least once a year, at the University, when the buildings are erected; but they may be called together in extra session, in such manner as may be provided for in said constitution, or by the by-laws of said institution.

"SECTION 4. *Be it further enacted*, That said trustees shall have power to appoint committees, all the members of which shall not be required to belong to the Board of Trustees, to perform duties which may be delegated to them by said trustees.

"SECTION 5. *Be it further enacted*, That all subscriptions, donations, devises, or bequests made upon the faith of the terms, conditions, or stipulations set forth in the constitution of said University, shall be governed thereby, and the subsequent change or alteration of said constitution shall not have the effect to alter the terms, conditions, or stipulations of said subscription, donation, bequest or devise.

"SECTION 6. *Be it further enacted*, That said trustees shall appoint a President and shall have power, from time to time,

to make by-laws and ordinances for the government of said University, not inconsistent with the constitution thereof, and for the appointment of professors, and other officers, and for regulating the duties and conduct of the officers, professors, and students, fixing the salaries of the officers, etc., etc.; provided the same be not inconsistent with the constitution and laws of this State, or of the United States.

"SECTION 7. *Be it further enacted,* That upon the death, resignation, or removal of any of said trustees, the vacancy occasioned thereby shall be supplied in the manner provided in the constitution.

"SECTION 8. *Be it further enacted,* That said University shall have full power to establish literary and scientific departments and those of law, theology and medical science, and such other departments as said University may see proper; and to confer upon students, or any other person, the degrees of Bachelor of Arts, Master of Arts, or any degree known and used in any college or university, and shall enjoy all other powers and immunities incident to corporations of this description.

"SECTION 9. *Be it further enacted,* That said University shall be established and located at Sewanee, on the Cumberland Mountains, in or near Franklin County, or at any point the Board of Trustees may hereafter designate in the State of Tennessee, the site to be selected by the trustees, or by such person or persons as they may appoint; which site shall continue until changed by the trustees according to the provisions of the constitution.

"SECTION 10. *Be it further enacted,* That said University may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution and the students thereof, from the intrusion of evil-minded persons who may settle near said institution, said land, however, not to exceed ten thousand acres, one thousand of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said University.

"SECTION 11. *Be it further enacted,* That no misnomer or misdescription of said corporation in any deed, will, gift, grant, devise, or other instrument of contract, or conveyance shall abate or defeat the same, but the same shall take effect in like manner as if the corporation were regularly named. Provided, it shall be sufficiently described to ascertain the intention of the parties.

"SECTION 12. *Be it further enacted,* That this act be and the same is hereby declared to be a public act.

"SECTION 13. *Be it further enacted,* That this act take effect from and after its passage.

"DANIEL S. DONELSON,
"Speaker of the House of Representatives.

"JOHN C. BURCH,
"Speaker of the Senate."

Passed January 6th, 1858.

I, F. N. W. Burton, Secretary of State, do hereby certify that the foregoing is a true copy from the original Act on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of the State, this 15th day of January, 1858.

F. N. W. BURTON,
Secretary of State.

An Act to Amend an Act of January 6th, 1858, Chapter 29th of the Private Laws, Entitled, "An Act to Establish the University of the South."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Stephen Elliott, Daniel Griffin, and J. Hamilton Couper, be and they are hereby appointed additional trustees to said University of the South.

SECTION 2. The said University of the South shall have power and authority to receive donations, and grants of land

in addition to the — of acres specified in the Tenth Section of the charter: Provided, That, if said additional donations, or grants, are of lands in the State, that such lands — sold and disposed of by the University and converted into personal securities or State bonds.

SECTION 3. The said University of the South shall have a right to establish such police and municipal regulations as may be necessary for the preservation of order and the enforcement of the by-laws of said University; the same to be consistent with the laws of the United States and of this State. That the foregoing shall be the amendment of the charter of said University.

SECTION 4. *Be it further enacted,* That this Act shall take effect from and after its passage.

(Signed) W. C. WHITTHORNE,
Speaker of the House of Representative.

TAZ W. NEWMAN,
Speaker of the Senate.

Passed January 19th, 1860.

STATE OF TENNESSEE:

I, J. E. R. Ray, Secretary of State, hereby certify that the foregoing Act is a true copy of the enrolled Act, now on file in my office, passed by the Legislature of Tennessee on the 19th day of January, 1860..

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at office in Nashville, on this 3d day of February, A. D. 1860.

(L. S.) J. E. R. RAY,
Secretary of State.

(See Rec., pp. 2 to 5.)

LEASE CONTRACT.

The following is exhibit "2" to the cross-examination of B. L. Wiggins, viz.:

Memorandum of Agreement made this — day of —, A. D. —, between the University of the South, party of the first part, and ——— party of the second part, Witnesseth, That the said party of the first part doth hereby release to the said party of the second part all that certain lot and premises situated at Sewanee, Franklin County, Tennessee, being part of the domain of said University of the South, and described as follows:

For a period of — years from this date at an annual rent of $— per year, payable each year in advance, and this lease being expressly made subject to the provisions of the Charter, Constitution, and Statutes of said University of the South, as well also to the regulations for leasing the domain of said University of the South established by the Board of Trustees. And the said party of the second part agrees with the party of the first part that — will pay the rent above specified in manner aforesaid, and all taxes and assessments upon said premises; and — doth further covenant and agree that during the said term hereby granted — will not, nor shall — heirs, or assigns, sell, or permit to be sold upon said premises hereby leased, any ale, beer, wine, or any liquors whatever; nor allow gambling of any description upon said premises, nor allow to be kept therein any Billiard Table, Shooting Gallery or Bowling Alley unless permission to keep the same shall have been given by the Commissioner of Buildings and Lands; nor suffer any business to be carried on injurious to the interests of the University; nor permit the erection thereon of any church, chapel, or place of religious worship, without the consent in writing of the said University of the South.

And it is further agreed: That the said premises shall not be sub-let, nor this lease assigned or transferred without the consent in writing of the Commissioner of Buildings and Lands. And it is further covenanted and agreed that any violation of the above restrictions and provisions shall cause this

lease to end and determine, with the right to said party of the first part to re-enter upon said premises. And it is further agreed that in all cases of transfer, the University of the South shall have the refusal. And at the expiration of the present term the University of the South shall have the option of taking the premises by paying for all improvements made thereon, or may renew the lease for another term of — years, on such terms as may be agreed upon by the parties respectively, and may also give a second renewal for — years; and in case the parties cannot agree upon the value of the improvements or the rental to be paid for a new term, the same shall be determined by arbitration, one of the arbiters to be selected by the Commissioner of Buildings and Lands and the other by the lessee; and in case they cannot agree, they shall call in an umpire—provided, however, that in fixing the rental for the new term, the value of the improvements shall not be taken into account as against the said party of the second part. —— heirs or assigns.

And it is further agreed that improvements to the value of — hundred dollars be made and kept on the premises by the party of the second part.

In witness whereof, The said parties have hereunto set their hands and seals the year and day first above written.

For the University of the South,

..... (L. S.)
Commissioner of Buildings and Lands.

..... (L. S.)

I hereby assign and transfer to —— the within lease and all the rights, privileges, and improvements thereon, for value received. This the — day of — A. D. —.

..... (L. S.)

I hereby agree to the above transfer.

..... (L. S.)
Commissioner of Buildings and Lands.

I hereby assign and transfer to —— the within lease and all the rights, privileges, and improvements thereon, for value received. This the — day of — A. D. —.

.....

(See Rec., pp. 175 to 176.)

Office Supreme Court, U. S.
FILED.
JAN 30 1908
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 488.

JAMES R. JETTON, REVENUE AGENT, ET AL., APPELLANTS,

vs.

UNIVERSITY OF THE SOUTH, APPELLEE.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNIVERSITY OF THE SOUTH.

WILLIAM D. SPEARS,
ARTHUR CROWNOVER,
ISAAC W. CRABTREE,
JAMES J. LYNCH,
Attorneys for the University of the South.

JOHN J. VERTREES,
ALBERT T. MCNEAL,
WILLIAM L. MYERS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

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JAMES R. JETTON, REVENUE AGENT, ET AL., APPELLANTS,

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UNIVERSITY OF THE SOUTH, APPELLEE.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNIVERSITY OF THE SOUTH.

May it please the Court:

By leave of court we submit the following brief in reply to the additional brief of appellant, which was filed on the day the cause was argued.

In their original brief appellants insisted that under a proper construction of section 32 of the Assessment Act of 1903 (set out on page 8 of our original brief), the State and county would be entitled to a lien only on the leasehold interests of the lessees and not upon the fee of the University. When they were met, however, with the proposition that to fasten a lien upon, and sell, the leasehold interests of the lessees would destroy the very object and purpose of the contract of exemption, they then insisted that the act in question, authorizing the assessment of taxes we complain of,

does not necessarily involve the sale even of the leasehold interests. In this they are in error. Subsection 5 of section 5 of the act (which is set out on page 8 of our brief), which provides for the assessment of taxes against the tenant for years, provides further that same—

> "shall be assessed as real estate."

Section 32 of the act, which is set out on the same page of our brief, concludes as follows:

> * * * "The whole proceeding for the collection of taxes from the assessment *to sale for delinquency* shall be a proceeding *in rem* and shall not be invalid on account of such land having been listed or assessed for taxation to any one as owner or owners, or to any person or persons not the owner or owners, or to unknown owner or owners."

Section 51 of the act provides:

> "That after the first day of May of each year, the trustee shall advertise *all real estate* upon which taxes remain due and unpaid, or which is liable for sale for other taxes, at the door of the court-house of the county on the first Monday in June following, and said advertisement shall be in the form following, to wit:"
>
> (Here follows the form and directions for advertisement.)

Section 52 provides that on the first Monday in June after said advertisement the trustee shall sell the property of each delinquent to pay the amount of taxes due from him and all costs, penalties, etc.; the sale to be to the highest bidder for cash.

The succeeding sections provide for the execution of the proper conveyance and for a report of said sales to the circuit court of the county.

Section 58 provides for a confirmation of these sales by the circuit court and the issuance of writs of possession *to*

put the purchasers at the tax sales in possession of the property thus sold for taxes.

It will be noticed from the above quotation from section 32 of the act that all taxes, whether assessed against a tenant for years, for life, or a remainder interest, shall be a lien on the fee; and, further, that the assessment shall be valid whether assessed in the name of the real owner or not, and that the entire proceedings, from assessment to sale, is one *in rem*.

This section was construed by the Supreme Court of Tennessee in the case of *Hadley vs. Hadley*, 114 Tenn., 156, in which it was held that the proceeding was one directly against the property, and that the name of the owner was immaterial. It was further held that under this act the purchaser at a tax sale *acquired an absolutely new and independent title*—not merely a derivative title from the person against whom the taxes were assessed.

The court in that case quoted with approval from *Osterberg vs. Union Trust Company*, 93 U. S., 424, as follows:

> "A lien for taxes does not, however, stand upon the footing of an ordinary incumbrance and is not displaced by a sale under a pre-existing judgment or decree, unless otherwise directed by statute. It attaches to the *res* without regard to individual ownership, and when it is enforced by sale pursuant to the statute prescribing the mode of assessing and collecting them, the purchaser takes a valid and unimpeachable title."

In just as strong language the rule is stated in *Heffner vs. Northwestern Insurance Company*, 123 U. S., 747, as follows:

> "But if the tax deed is valid, then from the time of its delivery it clothes the purchaser, not merely with the title of the person who had been assessed for the taxes and had neglected to pay them, but with a new and complete title in the land, under an independent grant from the sovereign authority, *which*

bars or extinguishes all prior titles and incumbrances of private persons, and all equities arising out of them."

The same conclusion was reached by Mr. Justice Holmes, while Chief Justice of the Supreme Court of Massachusetts, in *Emery vs. Boston Terminal Company*, 178 Mass., 172.

This rule, where the proceeding is *in rem*, that the sale vests the purchaser with a new and independent title, destroying the incumbrances and the equities in favor of all other persons, is laid down by—

Cooley on Taxation, vol. 2, p. 866.

Desty on Taxation, section 150, p. 966.

Certainly, then, if the State has a right to assess these leasehold interests, it has a right to sell same, and the equity in favor of the University growing out of the agreement on the part of the lessee not to assign without the University's consent can stand on no higher ground than an incumbrance or other contract in favor of any other person.

The power of the State to tax this property involves the power to confiscate it. In some States it is provided that where taxes are not paid at the time provided by law, the property against which the taxes are assessed shall be forfeited to the State.

Cooley on Taxation, p. 858.

In this case the act we are complaining of as impairing this exemption contract in favor of the University does not provide for simply a personal assessment against the lessee. The lessees are an unimportant factor in the assessment. Their names are not necessary to the validity of the assessment, as held by the Supreme Court in the *Hadley* case and as provided in the act. *It is a proceeding against the property.* The act authorizes the assessment, the advertisement, and the *sale* of the property. It further authorizes the issuance of a writ to put the purchaser in *possession* of the property.

To do this, it was practically conceded by adversary counsel in their argument at bar, would impair the obligation of the exemption contract set out in section 10 of complainant's charter. It would destroy the very purpose of the founders of this University in establishing the institution in the heart of a wilderness. The University would no longer be the "master of the situation," to use the language of the Supreme Court of Tennessee in the *Skidmore* case. When the leasehold interests are sold at public outcry, as provided by this act, of which we complain, then the University must pay these taxes, penalties, and costs or permit the property to be sold to dive-keepers and other objectionable persons, against whose intrusion the State guaranteed it in this charter.

Distinguishing the Comstock Lode Case.

Our attention has been called to the case of *Elder vs. Wood*, involving the Comstock Lode mining claim, which was decided by this court on last Monday. In that case, as we understand, it was decided by this court that any mining claim located on property the fee of which was in the United States Government was subject to taxation by the State of Colorado.

This principle was first decided, as we understand, by this court in the case of *Forbes vs. Gracy*, 94 U. S., 767, in which the court held that the interest of the locator was separate and distinct from that of the Government, and was property subject to taxation. In that case, however, the court held that in levying and collecting the tax no right or interest of the United States Government was affected or embarrassed.

It will be observed that the interest of the locator bears no analogy whatever to that of the lessee in this case. Under the Revised Statutes of the United States, sections 2319 to 2324, the locator of valid mining claims was vested with the absolute property in the same.

Under section 910 of the Revised Statutes it is provided as follows:

> "No possessory action between persons, in any court of the United States, for the recovery of any mining title, or any damages to any such title, shall be affected by the fact that paramount title to the land in which such mines lie, is in the United States; but each case shall be adjudged by the law of possession."

In *St. Louis Mining Company vs. Montana Mining Company*, 171 U. S., 655, this court said:

> "Where there is a valid location of a mining claim, the area becomes segregated from the public domain and becomes the property of the locator. There is no inhibition in the Mineral Lands Act against alienation, and he may sell it, mortgage it or part with the whole or any portion of it as he may see fit."

Here it will be seen that the Government retains no interest whatever in these mining claims, derives no rent therefrom, and has agreed to the sale and alienation of same. A tax on this mining claim cannot, in the slightest, affect the Government's interest nor in any manner create a burden, directly or indirectly, on any interest of the United States.

On the contrary, it has been uniformly held that the locator of Government lands could not be assessed with taxes on his interest in the land so long as the Government had any interest in the land or could be affected in any manner by the assessment.

Railway vs. McShane, 141 U. S., 600.

Kansas Pacific Railway Co. vs. Prescott, 16 Wallace, 603.

In *Stearns vs. Minnesota*, 179 U. S., 223, Mr. Justice Brewer said:

> "It has always been held that until the very last moment that leases or equitable rights of the United

States are extinguished, *no matter how trivial or small may be the right or lien reserved, the land is not subject to State taxation.*"

We call the court's attention to this fact, that in no case has the United States Government ever complained in vain of an assessment on property in which it had an interest. In no case has this court ever sustained an assessment where it has been shown that the taxes imposed any burden, either directly or indirectly, upon the United States Government, or upon any property owned by the United States Government.

Can it be supposed for a moment that this court would sustain an assessment against a lessee of property under the United States Government where the assessment would impair the rental value of the property to the Government?

Can it be assumed that this court would sustain an assessment that would result in the sale of a leasehold interest in property the alienation of which had been forbidden by the Government?

If the United States Government owned and controlled the University of the South, and conducted this school as a Government institution, with the same aims and purposes, could it be supposed that the State of Tennessee would be permitted to tax the lessees from the Government, burden the Government's rental income, and sell the lessees' interests to outsiders, in violation of the policy of the Government to keep its school free from outside interference?

Distinguishing Bank of Commerce and Other Cases.

In their additional brief appellants refer to the case of the *Bank of Commerce vs. Tennessee*, 161 U. S., 134.

In that case it was held that the exemption in favor of the shares of stock held by the stockholder could not be extended to either the capital stock of the corporation or its surplus. That was necessarily so, because the capital stock and the surplus have always been recognized as separate and

distinct items of property from the shares of stock held by the individual stockholders. That was true when the charter was granted, and if the legislature had intended to exempt the surplus and the capital stock it could have done so in apt terms.

In the case at bar, however, the leasehold interest is not a separate and distinct property from that covered by the exemption. *It is an interest in and a part of the exempt property.* As heretofore shown, at the time the charter was granted there was no law so assessing the lessee, and the language used in the charter was broad enough to exempt every interest, including the leasehold interest, from taxation.

Appellants argue that as the University parts with an interest in its property, *that interest* becomes taxable. The Supreme Court of Tennessee, in the *Skidmore case*, held that in leasing the property the leased interest *did not* become taxable. It was there held by the Supreme Court of Tennessee that leasing the property was the *only way* in which the University could use it profitably. If appellants are right, then the moment the University attempts to use its property by renting same it becomes taxable to that extent; but the Supreme Court of Tennessee held that *no interest* in the property became taxable until the University parted with the *whole title*. Its exemption is not to be frittered away by indirection simply because the University sees proper to rent this property to tenants. If so, then its exemption is absolutely of no value to it.

It is clear, we think, that the assessment and sale of these leasehold interests violate the University's charter contract for the exemption of its property from taxation in three distinct ways:

1. It lessens its rental value and destroys its income received from rents from the lessees.

2. It deters other lessees from leasing the property and erecting improvements on the University property.

3. It destroys the power of the University to say who shall and who shall not live on its property and come in contact with its students.

This University maintains, in a sense, a local government of its own, owning all the property and providing in its leases who shall live thereon and what shall and what shall not be done thereon; it controls the very life of the village. Up to this time, the people who live in this village are professors, boarding-house keepers, families living there for the purpose of sending their children to school, mechanics, tailors, and shop-keepers, either directly or indirectly connected with the University. The village is enclosed with fences and gates and kept up by the University; the streets are paved and worked at the expense of the University; and so absolute is its control of its surroundings that no municipal government is necessary to preserve peace and good order in that little University village. In this way its situation for a university for young men is ideal. The effect of taking from the University this control, subjecting the leasehold interests of all these tenants to sale for taxes—the opening of this domain to public purchasers—is too apparent to need discussion.

The maintenance of this University and the village of Sewanee has never been a burden to the State or county. All they ask is that the State and county be prevented from burdening the University.

Respectfully submitted,

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JOHN J. VERTREES,
ALBERT T. MCNEAL,
WILLIAM L. MYERS,
Of Counsel.

Office Supreme Court, U.
FILED.
JAN 28 1908
JAMES H. McKENNEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 488.

JAMES R. JETTON, REVENUE AGENT, ET AL., APPELLANTS,

vs.

UNIVERSITY OF THE SOUTH, APPELLEE.

ADDITIONAL BRIEF FOR APPELLANTS ON RIGHT TO TAX LESSEES.

FELIX D. LYNCH,
FRANK L. LYNCH,
ISAAC G. PHILLIPS,
Attorneys for Franklin County.

IN THE

SUPREME COURT OF THE UNITED STATES.

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APPELLANTS,

vs.

UNIVERSITY OF THE SOUTH, APPELLEE.

Additional Brief for Appellants on Right to Tax Lessees.

May it please the Court:

In reply to the argument of appellee that a tax on the leasehold interest of the lessee would be a burden on the university and would violate its exemption contract, we desire to call the court's attention particularly to the wording of the exemption clause of the charter, which is as follows:

> "*Be it further enacted,* That said university may hold and possess as much land as may be necessary for the buildings, and to such extent as may be sufficient to protect said institution and the students thereof, from the intrusion of evil-minded persons who may settle near said institution, said land, however, not to exceed ten thousand acres, one thousand

> of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said university."
>
> Record, pp. 3-4.

It is clear that the interest of the lessees does not come within the letter or spirit of the exemption. The interest of the lessee is not an interest which the university "holds or possesses." The exemption only applies to one thousand acres of the ten thousand which the university may "hold and possess" "as long as said lands belong to said university," and cannot protect any part of the one thousand acres, or any interest in the one thousand acres, which the university does not "hold and possess."

We insist that the buildings on this land belong to the lessees and are taxable as such, as shown by the authorities cited in the brief heretofore filed. The university recognizes these buildings as the property of the lessees. The Commissioner of Buildings and Lands, who executes the leases on the part of the university, is an insurance agent and issues to the lessees fire insurance policies describing the buildings as the property of the lessees, and in every instance where insured property has been destroyed by fire the lessees have collected the insurance (Record, pp. 181-2).

But, even if the lessees do not own the buildings, still they have an interest in the property, and that interest, whatever it is, is not protected by the exemption clause of the charter. The provision in the charter that the lands shall be exempt as long as the lands belong to the university clearly implies that as soon as the university parts with any portion of the land or any interest in the land, then the State may tax such portion or such interest so disposed of.

It is argued that at the time this charter was granted leaseholds were not separately taxable, and that therefore the exemption of the land necessarily included each and every interest in the land. If we read into the exemption of the land "each and every interest therein," then we must read the same expression into the limitation of the exemption, in which case the exemption clause would mean that each and every interest in the land is exempt as long as each and every interest in the land belongs to the university. The State is not attempting to tax any interest owned, held or possessed by the university.

It is argued by appellee that the State is attempting to tax the rents derived by the university from this land, and the Income Tax Case and other cases are cited as authority for the propositon that a tax on the rent is a tax on the land. The authorities would be in point if the State was attempting to tax the rents derived by the university from this land (which amount to $2,867 per annum) (Record, pp. 181-190). But the State is not attempting any such thing, but proposes to tax the lessees on the value of their investments in these leaseholds.

Appellee argues that the State cannot tax the interest of the lessees because, it insists, the exempt university could not then lease its lands on such favorable terms, and the tax would therefore become a burden on the university. While we think such a burden is too remote and indirect to require serious consideration, still if it is a burden it is one resulting from the exercise of a right the State has never relinquished

Assuming that this tax places a burden on the university, can this case be distinguished from the principles governing the Tennessee Bank Cases, wherein it was held that under the

charter the shares of stock in the hands of the shareholders were exempt from taxation, but, nevertheless, the State had the right to tax the surplus of the bank?

> Bank of Commerce *v.* State of Tennessee, 161 U. S., 134.
>
> County of Shelby *v.* Union & Planters' Bank, 161 U. S., 149.

In these cases it was argued that a tax on the surplus of the bank would place a burden on the stock which was exempt from taxation. In the opinion in the Bank of Commerce case (p. 148) Mr. Justice Peckham said:

> "It may be true that the general effect of a tax on this surplus might indirectly operate upon the shareholder by possibly lessening the value of his shares to some extent, but that is not the same as if a tax had been laid upon those shares."

Nor can this case be distinguished from the universally accepted rule that a State may tax the property of a corporation and also its bonds in the hands of the bondholder.

If the university should issue bonds secured by mortgage on this property, could it be insisted that the State had no right to tax the holder of the bonds? How can the right to tax the lessee be distinguished from the right to tax the bondholder or mortgagee? The tax against the owner of the bonds would burden the university, by lessening the value of the bonds, just as directly as the tax against the lessee would burden by lessening the value of the lease.

The principles governing the case at bar on the question of the alleged burden on the university by taxation of the lessee are discussed at length by Mr. Justice Shiras in Thomas *v.* Gay, 169 U. S., 264.

In that case certain Indian tribes had leased their lands, which were exempt from taxation, for grazing purposes. The Legislative Assembly of Oklahoma attempted to tax the cattle of the lessees grazing on the said lands. This tax was resisted on the ground that it would destroy the rental value of the land, and so, in effect, violate the exemption.

Replying to this argument, the court said:

> "But it is obvious that a tax put upon the cattle of the lessees is too remote and indirect to be deemed a tax upon the lands or privileges of the Indians."

The court further said (p. 274):

> "The suggestion that such a tax on the cattle constitutes a tax on the lands within the reasoning in the case of Pollock *v.* Farmers' Loan & Trust Company is purely fanciful. The holding there was that a tax on rents derived from lands was substantially a tax on the lands. To make the present case a similar one the tax should have been levied on the rents received by the Indians and not on the cattle belonging to third parties."

It is argued that the fact that this property was exempt from taxation has always been taken into consideration in fixing the amount of the rents to be paid by the lessees. This fact can hardly be material in view of the fact that the university only receives a nominal rental from the lessees, and so regards it (Record, p. 171).

We call the court's attention to the fact that the leasage or rentals received by the university from the lessees is from $1 to $25 per annum per lot, amounting in the aggregate to the sum of $2,867 (Record, pp. 183-191).

Even if the exemption is taken into consideration in making the lease, and if that exemption could make any difference in the leasage received, the State has not granted to the university any exemption that it can barter away, but the exemption, on its face, is personal to the university.

Counsel for appellee cite several cases in which it has been held by State courts that the lessee of exempt property was not taxable. We call the court's attention to the fact that in every one of these cases the decision was based either on the ground that the State had made no provision for the taxation of leasehold interests as such, or on the ground that in the particular case the exemption was one that attached to the land.

The case of University *v.* Skidmore is relied on by appellee. That was an effort on the part of the State to compel the university to pay taxes on the lands which it had leased; and the Supreme Court of Tennessee properly held that that could not be done.

Respectfully submitted,

FELIX D. LYNCH,
Attorney for Franklin County.

ISAAC G. PHILLIPS,
FRANK L. LYNCH,
Of Counsel.

JETTON, REVENUE AGENT OF THE STATE OF TENNESSEE, *v.* UNIVERSITY OF THE SOUTH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

No. 488. Argued January 28, 1908.—Decided February 24, 1908.

Although all the parties to this action are citizens of the same State the Circuit Court of the United States had jurisdiction because the case arises under the Constitution of the United States, as complainant insists that the tax sought to be restrained is imposed under a state statute that impairs the obligation of a legislative contract for exemption from taxation.

A charter exemption from taxation of land and buildings to be erected thereon so long as they belong to the educational institution exempted does not exempt from taxation the separate interests of parties to whom the institution leases portions of the property, and who erect buildings thereon; and a subsequent act of the legislature taxing such separate leasehold interest does not amount to taxing the property owned by the institution, and is not unconstitutional under the contract clause of the Constitution of the United States as impairing the obligation of the exemption provision in the charter. So *held* as to the act of Tennessee of 1903.

This court while not bound by the construction placed on a state statute by the state court, as to whether a contract was created thereby, and if so how it should be construed, gives to such construction respectful consideration, and unless plainly erroneous generally follows it; a decision of the state court, however, that a leasehold interest in exempted property cannot, during the exemption, be taxed against the owner of the fee, is not authority to be followed by this court, on the proposition that the leasehold interest cannot be taxed without impairing the obligation of the contract of exemption against the lessee in his own name and against his particular interest in the land.

A charter exemption from taxation cannot be extended simply because it would, as so construed, add value to the exemption; and an exemption from taxation of property belonging to an institution, so long as it belongs thereto, will not be extended to also exempt the leasehold interest of parties to whom the owner leases the same.

This court will not construe a state statute assessing leaseholds and making the tax a lien upon the fee as creating a lien on property exempted from taxation, and thereby violating the contract clause of the Constitu-

tion when the state court has not so construed the statute and the taxing officers of the State disclaim any intention of so construing it or levying any tax on exempted property.

An exemption of real property from taxation will not be construed as extending to the interest of the lessee therein, because a forced sale of the lessee's interest might put the property in the hands of parties to whom the exempted owner objects. Under the terms of the lease the owner can prevent such contingency by reëntering for non-payment of taxes.

The fact that the lessee does not own the buildings erected by him on leased property does not affect the right to tax his leasehold interest; it is material only on the question of value of his interest.

155 Fed. Rep. 182, reversed.

THIS is a suit in equity, brought in the United States Circuit Court for the Middle District of Tennessee, by the University of the South, a corporation, and by the several individual complainants named in the bill, who are residents of the county of Franklin, in that State, and lessees of certain lands from the university, to obtain an injunction against the individual defendants, who are a state revenue agent, and a trustee of Franklin County, and also against the county of Franklin, in the above-named State, to restrain them from taking any proceedings to collect taxes from the lessees of the university within the limits of the thousand acres mentioned in the complainants' bill.

The bill having been filed, a preliminary injunction was issued, restraining the collection of the taxes, as prayed for.

Thereafter a demurrer to the bill was filed by the defendants on several grounds, among others on the ground that, as to the individual complainants, the bill could not be maintained and the court had no jurisdiction to hear and determine the cause on their behalf.

The defendants also answered.

The demurrer was sustained as to the individual complainants and the bill dismissed, but was overrruled as to the university itself.

After a trial between the university and the defendants a final decree was entered in favor of the university, restraining the defendants from assessing, or attempting to assess, taxes

on the property and leasehold interests described in the bill, and situated within the thousand acres already referred to.

From this final decree the defendants have taken an appeal directly to this court, under the fifth section of the judiciary act of August 13, 1891, c. 517, 26 Stat. 826, as involving the application of the Constitution of the United States.

The material facts are as follows:

The University of the South is a Tennessee corporation, under a charter granted by the legislature of that State, January 6, 1858, and amended January 19, 1858. The corporation was created for the purpose of establishing a seminary of learning, to be located at Sewanee, on the Cumberland Mountain, in Tennessee.

The tenth section of the act, under which the question arises, is set forth in the margin.[1] That question is whether the assessments made against the lessees upon their interests in that portion of the one thousand acres of the lands leased to them respectively are valid or whether they are not a violation of the exemption from taxation granted by that section.

The Civil War coming on soon after the charter was granted very little work was done under it; but after peace was restored the university authorities, aided by subscriptions from those interested in the work, went on with it, and in process of time the thousand acres were duly surveyed and marked out and many buildings were erected for the university. Leases were also granted by it of lots within the thousand-acre limit to persons who, under such leases, built upon the lots severally leased to them. By this method a population of about 1,000 or 1,200 people had been gathered within the village called

[1] SEC. 10. *Be it further enacted*, That said university may hold and possess as much land as may be necessary for the buildings and to such extent as may be sufficient to protect said institution and the students thereof from the intrusion of evil-minded persons who may settle near said institution, said land, however, not to exceed ten thousand acres, one thousand of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said university.

Sewanee, situated within the limit stated, and which was a barren wilderness when the charter was granted. In fact, the very existence of the village is the result of the efforts of the university.

In the summer of 1906 proceedings were taken to assess taxes upon the interests of the lessees occupying various lots under the leases mentioned, and a hearing was had before the trustee of Franklin County, within which the lots were situated, and he held that under the act of the legislature of Tennessee, passed January 10, 1903, c. 258, being the general assessment act, the lessee of a leasehold interest of a lot in Sewanee was taxable on the value of such interest, and he thereafter assessed the tax in the case of an individual named, and announced his intention of doing the same with reference to all lessees similarly situated. This bill was then filed before any further assessments were made.

The several leases under which the various lessees of the university held their lots, among other things, provided that the lessees would pay the rent specified in the lease "and all taxes and assessments upon said premises." It was also provided in the leases that the premises should not be sublet or transferred without the consent of the commissioner of lands and buildings of the university, and that for any violation of the restrictions and provisions made in the lease the lessor might end and determine the lease and reënter upon the premises. Each lease also contained the following, the blanks being filled up in accordance with the terms which might be agreed upon between the parties:

"And at the expiration of the present term, the University of the South shall have the option of taking the premises by paying for all such improvements made thereon, or may renew the lease for another term of ———— years, on such terms as may be agreed upon by the parties respectively, and may also give a second renewal for ———— years; and in case the parties cannot agree upon the value of the improvements or the rental to be paid for the new term, the same shall be determined

by arbitration, one of the arbitrators to be selected by the commissioner of buildings and lands and the other by the lessee; and in case they cannot agree, they shall call in an umpire . . . provided, however, that in fixing the rental for the new term, the value of the improvements shall not be taken into account as against the said party of the second part . . . heirs or assigns. And it is further agreed that the improvements to the value of ——— hundred dollars be made and kept on said premises by the party of the second part."

At the time of the passage of the act of 1858 (the charter of the university) there was no statute providing for the separate taxation of the interest of a lessee in real estate, but the whole value of the entire real estate was assessed against the owner of the fee. The act of 1903, already mentioned, provided in subdivision 5 of § 5 that the interest of a lessee should be assessed to the owner of such interest separately from other interests in the real estate.

Section 32 of the same act provided that all taxes should be a lien upon the fee in the property, and not merely upon the interest of the person to whom the property was, or ought to be, assessed, and it was provided that the whole proceeding for the collection of taxes, from the delinquency to the sale, should be a proceeding *in rem*.

It is also asserted by complainant as a further ground of invalidity that § 2, subd. 2, of the act of 1903, providing a general exemption from taxation of religious, educational and other named classes of institutions, as therein stated, does not provide as broad an exemption as the special exemption granted the university by its charter, and if it be held that the above general exemption does not reach the complainant, while at the same time it is claimed to repeal the special exemption provided by the charter it impairs the contract between the State and the university, and is therefore void.

Mr. Charles T. Cates, Junior, Attorney General of the State of Tennessee, and *Mr. Felix D. Lynch*, with whom *Mr. Frank L.*

Lynch, Mr. I. G. Phillips and *Mr. Thomas B. Lytle* were on the brief, for appellants:

No Federal question was made by the bill. All of the parties, complainant and defendant, are citizens of the same State and no jurisdiction could be conferred upon the Circuit Court by the averments of the bill as to the alleged impairment of the obligation of a contract between the State of Tennessee and the University of the South. The continuing binding force of the contract between the State and the university has been solemnly admitted by the appellants, representing the State and the County of Franklin, and adjudged by the Supreme Court of the State of Tennessee. *University of the South* v. *Skidmore*, 87 Tennessee, 155 *et seq.*

When, notwithstanding these facts, appellee contends that its charter is impaired by the provisions of the Tennessee assessment act of 1903, c. 258, the reply is that the act in question, when properly construed, does not in any way affect appellee's property or place any lien or cloud thereon. The provision contained in § 32 of the act, that all taxes on real estate shall be a lien upon the fee in said property, must be construed to mean that such taxes shall be a lien upon the fee in property that is not exempt. This construction harmonizes and gives effect to all parts of said act, and sustains the same as a valid enactment in accordance with intention of the legislature. Lewis' Sutherland Stat. Const., §§ 381, 382. See also *Gold* v. *Fite*, 2 Baxt. (Tenn.) 248, 249; *Standard Oil Co.* v. *State*, 117 Tennessee, 618, 640, 641.

In ascertaining the intention of the legislature, it will not be presumed that the lawmakers intended to pass an act in conflict with the organic law. *Maxey* v. *Powers*, 117 Tennessee, 403; *Wise & Co.* v. *Morgan*, 101 Tennessee, 282; *Rose* v. *Wortham*, 95 Tennessee, 508.

The decision of the Supreme Court of Tennessee that appellee's property is exempt from taxation has the force of a law of the State, and will be treated as a part of the statute affecting said property.

It is not sufficient to give this court jurisdiction upon the grounds claimed, that by possibility there may be some cloud cast upon appellee's title by some possible action of the officers of the State, because the presumption in all cases is that the courts of the State and the officers thereof will do what the Constitution and laws of the United States require. *Shreveport* v. *Cole*, 120 U. S. 36; *Neal* v. *Delaware*, 103 U. S. 370.

The property rights of the several lessees of appellee in and to their respective leasehold estates and the improvements erected thereon under their several leases are lawfully subject to taxation by the State and county.

The legislature may provide that real estate shall be assessed as personalty or that personalty shall be taxed as realty. Cooley on Taxation (3d ed.), p. 641. And see § 63, Code of Tennessee (Shannon), the effect of which was to change the common law rule that a leasehold estate is personal property. *Alley & Bush* v. *Lanier*, 1 Cold. 540; *Burr* v. *Graves*, 4 Lea, 556.

The words "owner of land," as used in the statutes of Tennessee, do not necessarily mean the person owning the entire estate in such property, but may mean any person having an interest therein, whether in fee or for a term of years. *Alley & Bush* v. *Lanier*, 1 Cold. 540. See also Cooley on Taxation (3d ed.), pp. 633, 634, and cases there cited.

Under the provisions of the clauses herein in question, the improvements made by the lessees unquestionably belong to them and the plain implication of the leases is that, unless paid for by the university at the end of the term, the lessees might lawfully remove them. Under such circumstances a lessee making improvements on leased land is liable for taxes on such improvements. See *Russell* v. *City of New Haven*, 51 Connecticut, 259; *Philadelphia &c. R. R.* v. *Appeal Tax Court*, 50 Maryland, 397; *Zumstein* v. *Coal Co.*, 50 Ohio, 264; *Bentley* v. *Barton*, 4 Ohio St. 410; *Parker* v. *Redfield*, 10 Connecticut, 490; *People* v. *Bd. of Assessors*, 93 N. Y. 308, 311; *Ex parte Gaines*, 96 Arkansas, 227; *San Francisco* v. *McGinn*, 67 California, 110;

State v. *Campbell*, 23 La. Ann. 445; *People* v. *Shearer*, 30 California, 645, 656, 657; *State* v. *Moore*, 12 California, 56, 69, 70; *State* v. *Tucker*, 38 Nebraska, 56, 59, 60; *Luttrell* v. *Knox County*, 89 Tennessee, 257.

Appellee's charter exemption is personal to it. Immunity from taxation is not transferable; it is a privilege personal to the grantee. *Pickard* v. *E. T. V. & G. Ry. Co.*, 130 U. S. 631; *State* v. *Mercantile Bank*, 160 U. S. 161.

The intent to confer an exemption, and especially when it is insisted that the exemption passes to a transferee of the original grantee, must be clear, beyond a reasonable doubt. *Railroad Tax Cases*, 18 Wall. 226; *Providence Bank* v. *Billings*, 4 Peters, 565.

Mr. James J. Lynch and *Mr. Arthur Crownover*, with whom *Mr. William D. Spears*, *Mr. Isaac W. Crabtree*, *Mr. John J. Vertrees*, *Mr. Albert T. McNeal* and *Mr. William L. Myers* were on the brief, for appellee:

The assessment act of 1903 impairs the obligation of the contract of exemption between the State and the university.

At the time this charter was granted, and until the passage of the act of 1903 complained of, the common law rule that taxes on leased property should be assessed to the lessor prevailed in Tennessee. This rule is well established. Taylor on Landlord and Tenant, § 341. See also *East Tenn., Va. & Ga. Ry. Co.* v. *Mayor &c. of Morristown*, 35 S. W. Rep. 771. Thus when this exemption was granted the leasehold interests were assessable as a part of the whole estate to the university, as lessor, and formed a part of the estate exempted from taxation by this charter.

In the case of *University* v. *Skidmore*, 87 Tennessee, 155, it was decided that the *property* is exempt from taxation so long as the title remained in the University of the South. The State cannot now violate this contract and tax this exempt property by simply passing a statute changing the method of assessment. See *State of New Jersey* v. *Wilson*, 7 Cranch, 164, hold-

ing that the exemption attached to the property and passed to the purchaser, as it has been held that the exemption attached to this property so long as the title remains in the university, and that leasing the property does not take the title out of the university so as to destroy the exemption. The exemption is for the benefit of the university, and, as the record shows, materially enhances the value of its property in leasing same. It is this value that the act we are complaining of destroys.

By the terms of the leases the university is required to enter into a new contract, as to the amount of rent to be paid, at the expiration of each term. Necessarily, if the property is assessable for taxes, as against the lessee, it will not be so valuable to him as when free from taxation. As shown, this immunity from taxation entered into and became a part of the original lease contract, and was one of the things taken into consideration in fixing the annual rent thus contracted for. This element of value in the property of the university is thus destroyed by this act of which we complain.

This tax against the lessee is a tax on the right to occupy the land. Hence, in taxing the property when leased, or in taxing the interest leased, a tax is placed upon the only use to which the property can possibly be put, to be made of value to the university. The State insists that, while it may not tax the property directly, it may, nevertheless, tax its use or right of occupancy; while it may not tax the land, it may, nevertheless, tax the rent or income from the land, and thus burden its only value to the university. But see *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 427; *Dougherty* v. *Thompson*, 71 Texas, 202; *Moseley* v. *State*, 115 Tennessee, 52. Cases of *San Francisco* v. *McGinn*, 67 California, 110; *State* v. *Tucker*, 38 Nebraska, 56; *Luttrell* v. *Knox County*, 89 Tennessee, 257, and others, cited by appellants, discussed and distinguished.

It is not true, as stated by appellants, that the lessees own the buildings, and the arguments based upon this alleged ownership are therefore without force.

The Supreme Court of Tennessee in the *Skidmore case*, treated these improvements as the property of the university, and the decision in that case is based on that theory.

Even if the construction contended for by appellant that the lien should be limited to the lessee's interest in the property, the State would only have a right to sell the lessee's interest for the payment of taxes.

The injury to the university remains the same; if the State is permitted to assess the lessee's interest, and sell same for the payment of taxes, the university's control over this property is lost, and one of the greatest advantages provided for, in § 10 of the charter, is destroyed.

By retaining the title to, and the absolute control over, this one-thousand-acre reservation the university has been able to say who shall come near it. The leases all provide that they may not be assigned without the consent of the university. But, if the State can sell the property for taxes at public auction, the university is helpless to prevent the intrusion of outsiders. Its power to protect its students from contaminating influences will be gone, and one of its most cherished ideals will be destroyed.

MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the court.

The appellant insists that the Circuit Court had no jurisdiction of this suit, because all the parties are citizens of Tennessee. We think, however, that jurisdiction existed, because the case is one arising under the Constitution of the United States, the complainant insisting that under such Constitution the law of the State of Tennessee, passed in 1903, is invalid, because it impairs the obligations of a contract protected by that instrument. *Illinois R. R. Co.* v. *Adams*, 180 U. S. 28, 35. We therefore pass to the merits of the controversy.

As the complainant maintains that the exemption clause in the tenth section of its charter is broader than that contained in the second section of the act of 1903, we may at once refer

to the charter exemption, and if the contention of complainant is not justified by that exemption, it is unnecessary to consider that which is given by the act of 1903. It is by the charter exemption that we are to judge the matter.

Upon the question of the proper construction of the exemption clause in the charter, the case of the *University of the South* v. *Skidmore*, 87 Tennessee (3 Pickle), 155, is cited, and it is urged that within that case no tax can be assessed against the lessees of this property within the 1,000 acres. While in such a case as this we form our own judgment as to the existence and construction of the alleged contract, and are not concluded by the construction which the state court has placed on the statute that forms such contract, yet we give to that construction the most respectful consideration and it will in general be followed, unless it seems to be plainly erroneous.

Looking at the *Skidmore case*, we find that it does not uphold the contention maintained by the complainant. In that case the university filed a bill against Skidmore, trustee of Franklin County, to enjoin him from assessing for taxation against the university the property belonging to it within the 1,000 acres. In answer to the bill the State contended that the thousand acres would be exempt from taxation so long only as they were substantially owned by the university, but that when it gave a lease of the kind described in the case before us it ceased during the term of the lease to be the real and substantial owner of the land so leased, which by the lease was taken out of the exemption granted by the statute, and was from that time taxable against the university. The Supreme Court, however, held that the assessment made was void because the property, the land owned by the university, was exempt from taxation so long as it belonged to that corporation, and the making of the leases did not permit the property to be taxed against the university.

This is a different proposition from the one asserted by the complainant, and is not authority for its contention that the assessment cannot be made against the lessee in his own name

for his particular interest in the land while the university continues to own the fee.

It is plain that the state court has not construed the statute of 1858 as a contract that the interest of the lessee in the land granted to him for a term of years by the university cannot be assessed or taxed against him because of the exemption in question.

Counsel for the appellees, placing the *Skidmore case* aside for the moment, assert that when this exemption was granted leasehold interests were only assessable against the owner of the fee as part of the whole estate, and it was therefore a part of the estate exempted from taxation by the charter. We think this is not a correct construction of the contract of exemption.

As long as different interests may exist in the same land, we think it plain that an exemption granted to the owner of the land in fee does not extend to an exemption from taxation of an interest in the same land, granted by the owner of the fee to another person as a lessee for a term of years. The two interests are totally distinct, and the exemption of one from taxation plainly does not thereby exempt the other. The fact that at the time when the exemption was granted to the owner of the fee the State had not provided for taxation against the lessee in his own name, is not important. The different interests of an owner of the fee and an owner of an estate for years as lessee, existed, and such existence was recognized. An exemption of one did not necessarily include the exemption of the other. The contract of exemption did not imply in the most remote degree that the State would not thereafter, through its legislature, so change its mode of assessment as to reach the interest of a lessee directly, and not through the owner of the fee. In so doing the State does not tax the owner of the land in fee nor the fee itself. It taxes what it had a right to tax—a separate and distinct interest in the land, although the fee thereof be in the university, which cannot be taxed therefor. The doctrine that laws which are in force when a contract is made will generally enter into its obligations (*Osh-*

kosh &c. v. *Oshkosh*, 187 U. S. 437) is not denied, but it has no application. The laws existing when the contract was made have not been altered so as to impair the obligations of that contract by the passage of the act of 1903. Those obligations remain precisely as they were prior to its passage. The change wrought by the act affected third persons only (the lessees of real estate) and instead of leaving them to be taxed in the name of their lessor for their interest in the land as such lessees, the act provided for their separate taxation. Such act impaired no obligation of contract between the State and the university.

Nor is such an assessment the same in substance as one against the owner in fee of the land. We cannot see that *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, touches the case. This is not a tax on the rents or income of real estate. The university receives the rents or income free from any tax. The tax is, in both form and substance, upon a separate interest in real estate granted by the lessor, and is assessed against the owner of such separate interest. If the university could lease its lands and could also effectually provide that the interest of the lessee in the land so leased should be exempt from taxation, it may readily be seen that the amount of rent which it would receive would be larger than if no such exemption could be obtained, but that is a matter which is wholly immaterial upon the question of the impairment of the contract of exemption that was really made. That contract cannot be extended simply because it would, as so construed, add value to the exemption. The language used does not include the exemption claimed.

The lessee also agreed in the lease to pay the taxes in any event, and the claim that the agreement was intended only to refer to municipal taxation which might be provided for by the university cannot prevail against the plain words of the agreement.

That part of § 32 of the act of 1903, which makes the tax a lien upon the fee, even if void in that particular, does not make

the section void which provides for the separate assessment of the interest of the lessee. It is proper to mention that the appellants did not and do not claim that the thirty-second section gives a lien upon the fee for the tax against the lessee in cases where the fee is itself exempt from taxation, but they assert that the correct construction of that section is to apply the lien to the fee only in cases where the fee itself may be taxed; and in their answer they expressly aver that under that section neither the State nor county can have a lien upon any property which is exempt from taxation, and that no claim has ever been made, or was made in the proceedings instituted by the state revenue agent that the interest of the university in the leased premises could be assessed for taxation or could in any way be affected by the proceedings so instituted, and the defendants disclaimed any intention of assessing or levying any tax whatsoever against the property of the complainant university, and they denied that the assessment of the interests of the several lessees of the complainant university in the buildings and improvements erected by them upon said property would in any manner affect the interest of the university. What is the proper construction of that section on this point is not a matter of importance as to future assessments, because the State, having these objections before it, and, as we may presume, in order to avoid any such objection, even though possibly not well founded, passed another assessment act in 1907, repealing the one of 1903, and recognizing as valid all charter exemptions, and also providing that the lien of the tax should not apply to or affect any fee in property where the same was exempt from taxation. The question, however, remains, so far as the assessment here involved is concerned, and we are of opinion that the construction contended for by the defendants is the correct one. We cannot assume that the State would endeavor to create a lien upon property which it recognized as exempt from taxation, for the purpose of thereby attempting to obtain such a security for the payment of a tax due from another upon different property which is not exempt.

This never could have been the intention of the framers of the act of 1903.

Again, it is urged that if the interest of the lessee can be taxed, it might be sold for the non-payment of the tax, and thus some one might get into possession who would not be a proper person to be in such place, and the chief purpose of the charter in this respect would fail. If the interest of the lessee in the land could be sold for non-payment of the tax assessed thereon, such result would arise from the act of the university in creating it. But the lessor might under the terms of the lease at once reënter for non-payment of taxes.

What is the exact interest of the lessee in the land leased to him it is not necessary to here determine. It is plain that he has some interest in it, and that interest is distinct from the fee, and may be taxed when the fee is exempt from taxation. See cases to that effect in the margin.[1] In *Elder* v. *Wood*, decided January 27, 1908, *ante*, p. 226, it was held that a mere possessory right in a mining claim in land to which the United States had title was a right separate from the fee, and might be taxed under a state statute, although the fee could not because it was in the Government. *New Jersey* v. *Wilson*, 7 Cr. 164, is not in point. The exemption was assumed to be absolute, unconditional and unlimited in time. It seems that there was an act (that of 1796) which authorized the lands to be leased, but that act was not brought to the attention of the court. See *Given* v. *Wright*, 117 U. S. 648, 655, where a more full history of the case is given. The act repealing the exemption, passed after the sale of the lands by the Indians, was held void because it impaired the obligations of a contract. In the case before us the exemption lasts only so long as the university owns the lands, and when it conveys a certain interest in them

[1] *People* v. *Brooklyn Assessors*, 93 N. Y. 308; *People* v. *Tax Commissioners*, 80 N. Y. 573; *Parker* v. *Redfield*, 10 Connecticut, 490; *Russell* v. *New Haven*, 51 Connecticut, 259; *Brainard* v. *Colchester*, 31 Connecticut, 407; *Lord* v. *Litchfield*, 36 Connecticut, 116; *Philadelphia R. R.* v. *Appeal Tax Court*, 50 Maryland, 397; *Zumstein* v. *Coal Co.*, 54 Ohio St. 264; *Bentley* v. *Barton*, 41 Ohio St. 410.

to a third person it no longer owns that interest, which at once becomes subject to the right of the State to tax it. When the State exercises that right, as it did under the act of 1903, and taxes the interest in the name of its owner, the State thereby violates no contract, and the tax is valid.

It is said that although the lessee is bound to make improvements, yet he does not own them, even though their value is not to be taken into consideration against him when his lease is renewed. Whether he is the owner of the improvements made by him until the same are paid for at some time, is not material upon the question of the separate interests of the lessee and the owner of the fee, the ownership of the improvements being only material upon the question of the value of the interest of the lessee. Even if the university was entitled to become and was the owner of such improvements at the end of the second renewal, without paying for them, the question still remains as to the value of the separate interest of the lessee, which, even upon that assumption, might be greatly more than the rent to be paid. The value of whatever interest he has is to be assessed as real estate under the statute, and that value must be determined by the assessing officer. All we can say is that it is a separate and distinct interest from that of the owner of the fee and the assessment of that interest for taxation is not an assessment upon the interest of the university, and is not a violation of the exemption granted to it by the statute of 1858.

The decree of the Circuit Court must be reversed and the case remanded to that court with directions to dismiss the bill.

Reversed.